United States Court of Appeals for the Second Circuit



APPENDIX

74-1550

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NO. 74-1550

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

CARMINE TRAMUNTI, et al.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

DEFENDANTS-APPELLANTS' JOINT APPENDIX Vol. T(34) - Pages 4650 to 4804

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UNITED STATES OF AMERICA
vs.
CARMINE TRAMUNTI, et al.

73 Cr. 1099

New York, March 5, 1974; 10.00 A.M.

Trial resumed.

(In open court, in the absence of the jury.)

THE COURT: Mr. Lopez, I understand from what

you said in the robing room that the defendant Pugliese had
to go to a funeral today and his attorney and he will both

be here by 11.30.

MR. LOPEZ: Yes, your Honor.

THE COURT: You are covering for both of them?

MR. LOPEZ: I am covering for Mr. Rosenberg and for the defendant, and the absence of Frank Pugliese is voluntary on his part.

THE COURT: All right.

Yes, Mr. Fisher?

MR. FISHER: Good morning, your Honor.

Very early this morning I got aphone call from the defendant Christiano and he told me he was sick.

I was in such a daze that I didn't inquire any further.

I ask the Court to excuse his presence today.

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It is a voluntary absence. I join in that application.

THE COURT: All right.

MR. RICHMAN: Your Honor, I have just been informed that Mr. Warner is also ill. I will cover for him this morning. He will be here this afternoon.

In addition, your Honor, if I might, since it is up to me, I wanted to advise your Honor that I received a note from the wife of Murray Segal thanking all the attorneys for their consideration and thoughtfulness.

I don't know if it should be marked a Court exhibit or what I should do with it.

THE COURT: Send it around to everybody.

MR. RICHMAN: Very good.

MR. PANZER: Your Honor, Mr. Leighton will be a little late this morning. I will be covering for him.

It is all right with his client.

THE COURT: All right.

Mr. Dowd, are you ready to go?

MR. DOWD: Yes.

MR. CURRAN: Your Honor, I can't tell for certain, but are all the other defendants here, except the two that have been mentioned?

I don't see the defendant Russo, your Honor.

MR. DOWD: My client is driving his wife down

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tp3 this morning, your Honor. I would ask for just a few I wouldn't want to start without him. minutes. Let me look out in the hall, Judge. THE COURT: All right. MR. ELLIS: Your Honor, will you give me a ruling today? THE COURT: Yes, I sure will. MR. FISHER: Your Honor, Mrs. Rosner isn't here. I am covering for her in her absence. The defendant Inglese just advised me he feels unwell today. Apparently there is the flu running around West Street and I think it has caught him. He asks tha Court most respectfully if he can return to West Street in the hospital section. DEFENDANT INGLESE: Just for today. MR. FISHER: Just for today. I can say from my observations yesterday and today, he doesn't look quite well, your Honor. THE COURT: How do I look? MR. FISHER: You look very well, your Honor. THE COURT: I feel terrible. MR. FISHER: Appearances are sometimes deceiving, which is the theme of my summation. THE COURT: All right. Mr. Inglese, you under-

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stand that your absence today would be a voluntary absence?

DEFENDANT INGELESE: Yes, your Honor.

THE COURT: All right.

MR. FISHER: Thank you.

THE COURT: Go ahead.

I understand the line-up for this morning is Mr. Dowd.

How long do you expect to take?

MR. DOWD: I would say about an hour, Judge, but I rely on my former unpredictability on time. It be shorter, it might be longer. I don't want to be held to it.

THE COURT: I am not holding you to it at all.

Mr. Richman, you will follow.

MR. RICHMAN: Yes, your Honor.

THE COURT: How long do you figure on being?

MR. RICHMAN: I prepared enough for an hour, your Honor, but the court reporters indicate with my speed and rapidity I should be done in ten minutes. It will take about an hour.

THE COURT: Mr. Rosenbaum?

MR. LOPEZ: He is not here, your Honor.

THE COURT: Where is he?

MR. RICHMAN: I will cover for him until he

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arrives. He will be here, I am sure, your Honor. I spoke to him last night.

THE COURT: All right.

Otherwise, we are ready, right?

MR. DOWD: Might I have just a few minutes, your Honor, for my client?

I point out he has been here every day. He has been here under trying circumstances. His wife was in the hospital. He is bringing her down here today. I ask the Court's patience for a few minutes. I obviously want him here when I sum up.

THE COURT: He should be.

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MP. DOWD: As I say, I know he is wife down today, which means he probably is going to drive so that may account for his being late.

THE COURT: All right. I will tell you what, I will give you 10 minutes and if it doesn't work out, Mr. Richman, would you be prepared to go ahead before Mr. Dowd?

MR. RICHMAN: He is here now.

MR. DOWD: Here he is now, Judge.

THE COURT: All right. Then we are ready,

MR. DOWD: Yes, your Honor.

THE COURT: Once more, I admonish you all, please argue to your heart's content about what is in the record, but please don't force me to stop you from wandering too far away from the record.

All right, bring in the jury.

(Jury present.)

THE COURT: All right, Mr. Dowd.

MR. DOWD: May it please the court, fellow defense counsel, counsel for the prosecution, ladies and gentlemen of the jury:

Let me first repeat what other counsel have said before me. This is my first and last time to

talk to you about my client's case orally, rather, about the government's case and how it applies or does not apply to my client. My client, Frank Russo, sitting over there in the gray suit, is charged with having committed two crimes. He is charged by an indictment. He is charged with conspiring to violate the federal narcotic laws as one crime and he is charged with possession of an eighth of a kilogram of heroin.

Now, that seems simple enough.

Let me first cite to you an example of perhaps how it can get confusing and then I will go into some basic principles which I think we should all be aware of during the summations, during the judge's charge and certainly during your deliberations.

When you came into this courtroom you came as human beings and each of us as counsel for the defense and the prosecution plead withyou when you leave this courtroom to deliberate this case to take your good common sense with you, judge the facts, applying the law as Judge Duffy tells you it is.

But I think it is naive of us to assume that any of us are any different from any other of us in this respect, that we are human beings and we have human feelings. We sometimes make presumptions, we sometimes

assume things as things happen and perhaps we are misled by this.

For instance, I told you about the two charges my client is charged with. Conspiracy, conspiracy to violate the narcotic laws, and possession. Let me give you two pieces of infromation. I have given you one, the two charges. Let me give you another piece of information.

Detective Casella, who you remember testified a week ago Saturday, got on the stand and he told you that he had received from a person who he knew as Franki three bags of substances which contained heroin.

Now, these are the three bags that were introduced into evidence.

Now, you might say to yourself, "Well, from what you have told us, this seems simple enough. Everything else that they said in the case about Mr. Russo applies to the conspiracy and these three bags obviously apply to the possession count."

Not so. You might have, as ordinary people like you and me, you might have assumed at the time that these were introduced into evidence that Mr. Russo was charged with having committed the substantive crime of possessing with intent to distribute or distributing

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these drugs. No, he is not. So you can see that you can sometimes perhaps make assumptions as to what you have seen and heard based on limited information.

In respect to these three bags of substances containing heroin my client is alleged to have committed an act in furtherance of a conspiracy, he is not charged with possessing them with intent to distribute or distributing them.

What is he charged with possessing? is charged with possessing an eighth of a kilogram of heroin in or about the month of May, 1971.

You ponder while I talk and I will certainly refer to it, whether there has been any evidence that you can recall that Frank Russo participated in any transaction whatsoever in respect to narcotics in the month of May, 1971.

The indictment, as you know, in respect to a conspiracy alleges that two or more people combine, form a partnership and an agreement, an unlawful agreement, and that pursuant to our law to be charged with such a crime you must have allegedly committed or done an act in furtherance of that agreement.

The act alleged in the indictment done in furtherance of this agreement is that Frank Russo allegedly

gave to Butch Pugliese \$3000 in May, 1971. Obviously in one sense they are charging conspiracy in allegedly handing over \$3000 in May, 1971, and in the other sense they are charging a substantive count in the sense of receiving an eighth of a kilogram of heroin in May, 1971.

Now, in each and every case you have been told time and time again the burden of proof is on the prosecution, and this is just and it is reasonable. And why? Because the prosecutor is coming here before you and asking you to convict one of your fellow citizens. It is an unpleasant task that you are asked to perform by the prosecutor. In fact, the Bible says judge not lest you be judged.

Therefore, the prosecutor should provide the clearest proof possible so that you as jurors will not be left in doubt. You should not be put in the position of committing the horrible sin of wrenching an innocent man from his friends and family and stigmatizing him as a felon, a narcotics dealer, without the proper evidence.

Therefore, if the prosecutor either carelessly or wilfully fails to produce all of the evidence
available in support of his indictment he is asking you
to do his job, the job he is paid to do. You should
reject and repudiate such a cunning invitation.

You have taken an oath to test and weigh the evidence presented here by the prosecutor and you have taken an oath to keep interjecting a challenge to that evidence, the presumption of innocence, the question

of reasonable doubt.

a reasonable doubt.

It is the exact opposite of your job to supply from your own inagination what he has failed to bring to you by reason of his lack of diligence. In other words, the burden is a complete one on behalf of the prosecution to prove the guilt of a defendant beyond

Judge Duffy will charge you about reasonable doubt and tell you exactly what it is and you must follow completely and totally the law as he gives it to you.

As I said, and as has been said to you before, every man charged with a crime in this country is presumed to be innocent. You remember when you sat out there before you were selected as jurors that Judge Durfy asked you if you were selected to consider this case as if someone close and dear to you were charged with a crime. Would you be the kind of juror you would want to sit on a case where one of your loved ones were charged with a crime?

Consider, and I think it is fair for you to consider, the wrenching agony that any man charged with a crime, a particularly serious crime, goes through that his family goes through, in terms of having to stand trial. That in itself is something which I think

you cannot really talk about unless you have had an opportunity to experience it, and perhaps it would be better if we could have all of you gone through such an experience. Unfortunately, and perhaps fortunately, most of us haven't, because it is not pleasant. Regardless of the outcome, it is not pleasant at all.

Remember too that each man, each defendant in this case, and my client, is a human being, an individual, a very distinct individual from anybody else, and therefore in your consideration of this case, in your consideration of the evidence, or its lack, consider him independently and separately, because to him only his case is important, to me only his case is important, and I ask you when you consider him in this case consider him individually because he is entitled to that. Guilt or innocence is a very personal thing and my client cannot be found guilty based on theguilt of someone else.

Now, as I said before, we are all human beings. Some of you have said that you served on juries before, but I doubt if any of you have served on a jury in a trial that has lasted as long as this. You have been bombarded for weeks with terminology and phrases which perhaps you have seen on television or heard

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on television or read about, but with which you were not familiar, such words as "conspiracy," "presumption of innocence," "reasonable doubt," objections to hearsay, objections to that, sustaining, overruling, what have you. These are things people ordinarily don't come in contact with.

We ask you to apply a certain set of rules to the facts as you see them. You are the ultimate judges, judges, of the facts. No one can replace your decision. No one can appeal from your decision. It is final as to the facts. The judge decides the law and rules in respect to the law, but you 12 jurors decide the facts. This is a tradition of ours that goes back to before the beginnings of our country. Perhaps it was a mistrust and, indeed, it was a mistrust of a government or any government to decide the fate of another human being, the feeling being that 12 citizens much like one accused of a crime should decide the facts as they apply to him.

So when the judge talks to you about the presumption of innocence it is an abstract phrase.

All we can do is pray and plead and hope that you understand it and apply it. It has to be something living, it has to be a vivid, viable protection to a defend-

ant.

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I don't mean that a presumption of innocence is a shelter from which a man who is guilty must be bombarded by the truth. But as one court has said, the presumption of innocence is the first and last witness called in any case. It stands before the defendant when he is charged in the indictment, it stands beside each witness the prosecution offers, and says not guilty. It is an old witness, as old as our judicial system, it is a witness noone has ever dared impeach, and I hope and I trust by the oath that y ou took that when the judge charges you about the presumption of innicence in respect to my client that it will be that same presumption of innocence which surrounds the accused in every case in any place where fair trials are held.

Don't let it be an abstraction.

We always, and all of us, have the common reaction to pick up a newspaper, see of an arrest, and perhaps the instantaneous reaction is "We got the burn" in a particular case. It is human nature. I do it.

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We hope and we trust, and we believe in you because of your oath, that you can set aside these human feelings that one might have when you know that someone is charged with a crime and understand and believe that that person ispresumed to be innocent and his guilt must be established beyond a reasonable doubt. As much as it is Frank Russo's protection, it's my protection, it's your protection, it's our children's protection. heritage handed down for well over three centuries. Don't break faith with it. We trust in you because we have all jointly, counsel for the defense individually, counsel for the prosecution, selected you, we chose you to sit on this case, and when you swore to answer questions that the Judge propounded to you, and you did, we believed you when you gave those answers, we believed you were telling the truth, we believed that you would try this case fairly and impartially. That's what we ask of you.

Now, let me examine, if I may, the case or lack of case against my client.

The first witness who took the stand that offered evidence, and let's call it evidence, although the weight of it, the quality of it you must judge, was John Barnaba.

Now, you have heard a litany of John Barnaba's history of crime. You have heard about his desertion in 1952, you

have heard about his two narcotics convictions, his time in prison, his violation of probation in the early sixties, you have heard about his operations in policy, his admission to shylocking, his admissions in respect to his dealing in narcotics over a lengthy period of time, major dealings in narcotics, and this is the man who first offered testimony against my client, John Barnaba.

He said he was a used car salesman. I might ask a simple question at this time which you can consider. Would you buy a used car from this man? Very simple.

The Judge said one of the considerations when reaching a decision is to consider you yourself making a weighty decision in your own life. Buying a car isn't a terribly weighty decision in your life, but would you buy a used car from John Barnaba? That is a good question to ask.

I agree with Mr. Phillips, who said in his opening this is not the kind of man you would invite to dinner. Agreed. I submit to you from what I will point out this is not the kind of man you will believe.

Now, remember, the indictment charges Frank
Russo with possessing an eighth of a kilogram of heroin
in or about May, 1971. What does John Barnaba say on
the stand when he gats on the stand? On direct examina-

tion he said he was September, 1971.

Now, you can't ask poor John Barnaba to be pinned down to a particular date, but how about a particular This indictment is based on his grand jury month? testimony, which he admitted to, in which in December, 1973, he said May, 1971. On the stand some time after he has changed his story, it is now September, 1971.

Now, when did Frank Russo come into this case in respect to this alleged transaction in September, 1971? Well, it wasn't when John Barnaba was arrested by Frank Rogers, the State Police, the New York City Police, because he had an interview, and you have heard numerous questions about the interview he had, which was taped, and you remember John Barnaba admitting on the stand on cross-examination that he told Frank Rogers he was levelling with him because he wanted to help himself, because he knew he was facing 50 years in prison, and what would a man like John Barnaba do to prevent himself from going to prison for 50 years. That is a question you are going to have to answer yourselveswhen you deliberate and decide his credibility.

He was asked that night about the people he had dealt with and I asked him on cross-examination, "Did. you tell Frank Rogers that you dealt with Frank Russo?"

He said, "No." He said, "I was holding back."

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Why? Has he demonstrated he is any friend of Frank Russo? By his own testimony he had very little contact with Frank Russo. Allegedly he met him on a street corner. He said he had known him before that. No connection how he knew Frank Russo before, no connection why the meeting on the street corner. According to his direct testimony Frank Russo walked up and said, "I want an eighth of a kilogram of heroin," and John Barnaba said okay. "You know, tonight." That's his direct testimony.

John Barnaba didn't mention Frank Russo in
1971 when he was questioned by Frank Rogers on the night
of his arrest. He denied that he had ever dealt with
Frank Russo.

In addition, he was interviewed by Agent Torrey Shutes on September 21 and September 25, 1973, and remember I cross-examined him about that. "When you were interviewed then did you mention this transaction that allegedly took place in September or May or any time in 1971?"

"No, didn't mention it."

He testified before a grand jury in October,

1973, just some five months ago. He didn't mention Frank

Russo. But November 29, 1973, up pops the story of

Frank Russo in respect to September, 1971, or May, 1971.

He testified before a grand jury just subsequent to his

interview in November, 1973, that it was May, 1971.

But you are seeing that many of the witnesses between their grand jury testimony and their testimony on the stand have changed dates and places and what have you. Well, because, for one thing, much of their story might not hang together if they didn't change it.

So John Barnaba, interviewed twice, once says he didn't have any connection with Frank Russo, the second time he never mentions him, the third time he says May, 1971, in an interview. Then he gets on the stand and says it's September, 1971, uncorroborated, no support for his testimony.

Place yourself in the position of having been charged with the commission of a crime in May, 1971. The man gets on the stand and says, "No, it was September."

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He also said that this transaction took place about a month and a half after he had met Frank Pugliese in front of the Beach Rose Social Club.

In September, in his September, '73, interview with Agent Torrey Shutes he said he met ButchPugliese in December, 1970, so that would place this incident some time in January or February.

If you were placed in this position, how in God's name could you explain where you were over such a period of months? How could you deny it? A man can get on that stand alone, testify about something, and on his testimony alone he wants you to convict Frank Russo of possession of an eighth of a kilogram of heroin.

Now, let us talk about that.

The Judge is going to charge you, I expect him to charge and I'm sure he will, that the government has to prove beyond a reasonable doubt the material elements of a crime, another intangible word, material elements of a crime.

Well, with respect to a crime of distribution and possession of heroin, you got to prove it was heroin. So John Barnaba testified on direct examination, sure, it was heroin, "That's what I gave him, an eighth of a kilogram of heroin."

Do you remember his cross-examination when I asked him about the contents of the bag? Page 1767.

"Actually, of your own knowledge, you didn't know what was inside the bag?

"A I didn't see it, no.

"Q Of your own knowledge, it could have been sugar in the bag?

"A It could have been anything, yes."

He told you on the stand he doesn't know what was in the bag, and yet the government says convict based on that testimony alone. In other words, draw an inference, more than draw an inference, speculate, fill the gap that the prosecution has failed to fill in its proof.

John Barnaba in no way has proved in any way, shape or form at the very least that what was in that bag on that night was heroin. I submit to you that based on his testimony, his credibility as a human being, that he in no way has proved beyond a reasonable doubt that Frank Russo ever engaged or attempted to engage in any transaction at any time in 1971.

Remember the stakes. Remember the stakes.

John Barnaba, accused of a felony, said he was facing 50 years, didn't remember the life part, remembered 50 years, told you he pleaded to an E felony, a maximum of four years,

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been sentenced.

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not being prosecuted here for any crimes he may have committed under the narcotics laws, not being prosecuted for tax evasion, although he admitted he filed false income tax returns, and strangely he and the other witnesses, Provitera, Stasi, Pannirello, Dawson, by some strange coincidence they have all pleaded guilty but they haven't

You know, Casey Stengle might have said back in his days with the Mets, "That's amazin'."

Do you wonder, perhaps, what was at stake in John Barnaba's mind when he testified? He told me on cross-examination he understood he had to produce something of value in order to get consideration. If he expected the U.S. Attornsy to get up on his behalf, he'd better produce in here. And I suggest to you that's what he is doing and did. It's a production, a fabrication. In any case, never, I submit to you, ladies and gentlemen, could it be considered proof beyond a reasonable doubt. I submit to you that the man's character belies that conclusion.

What is at stake for him belies that conclusion.

There is one thing that I am convinced of and
I think by watching you perhaps you are convinced of in
respect to this case. Not only beyond a reasonable doubt,
but to a mathematical certainty, beyond all doubt, crime

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pays. It certainly does. And you don't have to believe me or anybody else, all you have to believe is Barnaba, Stasi, Provitera, Pannirello and Dawson. These men have gotten on the stand and said that they were major narcotics dealers. Reasonably in your own minds, do you have any doubts that they are going to be out on the street before you are, back in society?

Is there any question in your mind that my client, Frank Russo, is charged in any way with doing anything even within the scope of these men, of what they did, what they say they did, the money that they made? And yet, again, do you really believe that they are going to suffer one day?

Frank Stasi, we found out, the airline ticket and the pot of gold.

John Barnaba, paid from November, December,
1972, 150 bucks a week. 150 bucks a week. This is the
same man that told me on cross-examination that just the
summer before, in '73 he had taken \$15,000 from a Jimmy
for heroin, couldn't get it, and then he kept the 7500
and gave 7500 back. A thief even in his own world.
This is the man the government produces for you and asks
you on the substantive count of possession to convict Frank
Russo, the man who said to you, "I don't know what was

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in this bag."

If he didn't know and he was the one present,
he was the one that allegedly testified about it, how can
the government presume or ask you to presume what was in that
bag, assume, imagine what was in that bag? The witness -I use the word loosely in respect to John Barnaba -- the
witness didn't know.

I submit to you his whole story about '71 is a fabrication.

Now let's talk about Harry the Horse. Harry the Horse told Agent Logan in the business for ten years, made five hundred thousand, stashed three hundred thousand, now the vice-president of a company out on the streets, good law-abiding citizen. Another witness against my client, Harry Pannirello.

What did he tell you? He told you he is testifying because he is mad at people, people turned their backs on him, but he didn't say -- in fact, he said my client didn't turn his back on him, he never talked to my client.

What is Harry Pannirello's motive for being here?
Exactly the motive that John Barnaba had, his own personal skin.

Now, he admitted on cross-examination he never

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testified before a grand jury about Frank Russo. He admitted too, that having had two interviews with various agents which were reduced to writing, he never mentioned Frank Russo or an alleged transaction which is allegedly part of the conspiracy which took place allegedly in the spring of 1972. He had a taped interview at some time with agents.

Remember very interesting, very colorful testimony. Harry Pannirello sat there in the chair and told you about a meeting with Frank Russo, told you about a deal he made with Frank Russo, told you about a conversation, quoted the conversation. Tremendous. I mean, there is a witness, he is quoting a conversation about something that happened in the spring of 1972.

I asked him just to make sure that this was what he was talking about, I said, "And you described the conversation between you and Mr. Russo, correct?

"Yes."

This is at page 2551 of the record.

"Concerning this transaction?

"Yes.

"And you say that Mr. Russo received a half a kilo of heroin?

"Yes.

"And he later gave it back to you?

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"Yes.

"And you quoted to us where he said that the person he was going to give it to didn't want it any more or didn't want it for some reason?

"Yes."

All right, he said, "I had the conversation in the spring of 1972." He must have forgotten he had a prior conversation with the agents.

Remember that cross-examination where I asked him the question on page 2520, "And is it true you told the agent you never talked to Francis Russo, correct?

"YES.

"You told the agent you never made a deal with Frank Russo, you yourself?

"Yes.

"Was that true?

"Yas."

Page 2521.

"Was that the truth that you told the agent?

"Is it the truth now?

"YES."

His own words. One day vividly describes something, then tells you that when he told the agent this never

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happened, that's also the truth.

Again, we don't live in a make-believe world, we don't live in the world where the witness gets on the stand and through brilliant cross-examination breaks down and cries, "Oh, you got me, I told a lie."

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What did Harry Pannirello do? He said, "That's true, what I said was true, it's about the same thing," and kept insisting both were true.

Isn't that the obvious reaction of a liar caught in a lie, knowing the stakes for him in terms of having the U.S. Attorney speak on his behalf when it comes time for sentencing?

Ments about allegedly the same thing. Now, which are you going to believe? I submit to you that there are two conclusions you can draw. My client is presumed innocent and if you can draw two conclusions about whether this happened or whether it never happened, then you must find it didn't happen.

Also another little oversight with Harry Pannirello.

Later on he said, oh, he was confused when he talked to the agent. He was very confused, because he said it was true when he told the agent that he never talked to Francis Russo, never made a deal with him and he said it's true now. It's very confusing for everybody. It's very horrifying for my client to hear such a thing, to hear such a brazen man get on the stand and try to, by boldness and brazenness, deny these

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very contradictory statements.

Then too consider another thing about the spring of 1972 as Harry Pannirello saw it when he talked to the agents in the two interviews he had which were reduced to writing. You remember I questioned him, "Didn't you tell the agent from February to June or, in fact, to September, 1972 there was a dry spell, you couldn't get any narcotics?"

"Yes, I told him."

"Didn't you tell him severaltimes?"

"I told him several times. I told him three times. Couldn't get drugs during this period, "come couldn't make any deals." outen't make any deals.

In fact, he was looking for another source.

Mr. Engel on redirect examination asked -- I
think it was Mr. Engel -- asked Mr. Pannirello, "What
about this? What about what you told the agent?"

"I was confused."

Is his confusion enough to convict my client?

Is that enough for you?

Consider Harry Pannirello, Harry the Horse. We haven't had any evidence offered that he was connected with OTB, but we do know from another witness that "horse" on the street means heroin, and Harry the

Horse, who told about his \$500,000, told about his

10 years in the narcotics business, told you about his
arrest -- I'm sorry, didn't tellyou about his 10 years,
told Agent Logan, denied on the stand, of course, that he
had been 10 years involved, not being prosecuted in this
case for anything he said about all of these alleged transactions, going scot-free on this case. Again in
respect to his income tax, no, didn't file any income
tax return for heroin. You know, you get in
trouble for that. If you put down 200,000, source
of income narcotics, well, you can understand it, but you
can still understand and believe that that is a lie.

And do you really believe when Harry Pannirello told Mr. Panzer in cross examination, "When you want me to tell you how far I would go to save myself, give me some specifics," that's the kind of man who asks you to believe him when he himself admits his own contradiction in respect to something he testified about ever happened.

I submit to you that this testimony of his -and we will call it testimony, I wouldn't call it evidence -- is inconclusive. At best inconclusive,
contradictory. And yet the government asks you to
convict my client based on the testimony of Harry Pannirello.

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Now let us go ahead.

January, 1973. Now, remember, this is the part that Detective Casella testified about. the part that concerns the alleged conspiracy.

Now, I have little doubt, but perhpas because I am saying it there will be doubt, whether a couple of days from now whoever is summing up for the government may be waving these bags around constantly andyou may be watching them and be distracted. Remember the charge against my client in respect to those bags is that they were acts done in furtherance of the conspiracy; confusing, perhaps, not charged with possession with we the intent to distribute, not the substantive crime value of the content of the conte

Now, Detective Casella got on the stand, experienced man, narcotics detective. He started to testify he met a man on January 5th known as Frankie to him, he said who became later known to him as Frank Russo.

When was it later known? Did he tell you? No.

Who was at that neeting on January 5, 1975? A man by the name of Frank Monaco and a man by the name of John Barnaba. The same John Barnaba that was here. He was at that meeting.

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Now, John Barnaba has testified about everybody that he and dealings with, yet he didn't testify about these alleged transactions in January, 1973. He was there at the meetings. He was on the stand. I am not talking about a witness that you have never seen, I am talking about someone who was on the stand, John Barnaba.

Ten days later trots on Detective Casella and he says John Barnaba was there. He said he met a man named Frankie.

"Do you see him in the countroom?"

Well, he gets off, goes around this chair,
walks this way, walks all the way around slowly looking
at everybody, walks back here looking at everybody,
walks back to the middle of the table, walks back and points
to the defendant Frank Russo.

Now, like anything else, he says that that Frankie that he dealt with is my client, Frank Russo.

Remember that walk. And perhapsyou observed -- remember the man who testified in the morning, Agent Moore, Special Agent Moore? Perhaps you as jurors observed five rows back in the courtroom he was sitting at the time my client was allegedly identified, five rows back he was sitting directly behind my client, Frank Russo, with his arms up -- perhaps you noticed --

on the back of the bench just like that man with the white shirt and the red tie is now. Perhaps you noticed that, in a direct line behind my client at that time.

And remember Casella walking back and forth, looking at everybody very carefully, and remember his later testimony, "Can you identify the defendant Hank Springer?" who he had been with the month before and allegedly seized the material from.

"Sure, that is the man sitting next to the lady," who was also sitting next to my client, who was almost in a direct line with Agent Moore sitting five rows back.

He testified about two identifications, one of them was definitely, to your knowledge in this courtroom, because of your knowledge of the names of the people, wrong.

If a man gets on that stand and testifies about two things and you know from your own knowledge that one of them is wrong, how credible is he as to the other thing that he tells you? Consider it. Consider it. Consider it.

John Barnaba said he had known Frank Russo

for a long time. Why wasn't he here if these things

happened? Why wasn't he here to testify? Are these

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the gaps that you are expected to fill in?

Remember, the duty of the prosecution to prove the guilt of my client, my client, not some Frankie, beyond a reasonable doubt.

Now let me talk to you about what perhaps I hope you will consider true speculation.

Agent Casella also testified about two other meetings. He testified about meeting allegedly Frankie, who he says is Frank Russo, meeting him and he is driving a white 1967 Pontiac with license plate -- I don't even remember the number, but he gave a number, something 74 or 84XL. 2 . T b4/d).

Now you are to presume that that is Frank - une Russo's car. Is there any evidence that it is his car? But remember in the morning some very interesting testimony. Talk about speculation. Agent Moore got up in the morning and said, "On January 10th I was around Pelham Parkway and I saw a yellow-andblack 1967 Pontiac convertible driving around the block, I don't know who was in it. I saw it stop on the median, saw a man get out, an unidentified white male." narrows it down to 6 million people in the immediate vicinity of this courthouse. And I have no idea how many yellow 1967 Pontiac convertibles there are

floating around, no idea whatsoever. No testimony about it. No testimony about what the license plate was, who owned the car, just that, "Oh, I saw that car again in December." He didn't say anything distinct about this car, this miraculous memory.

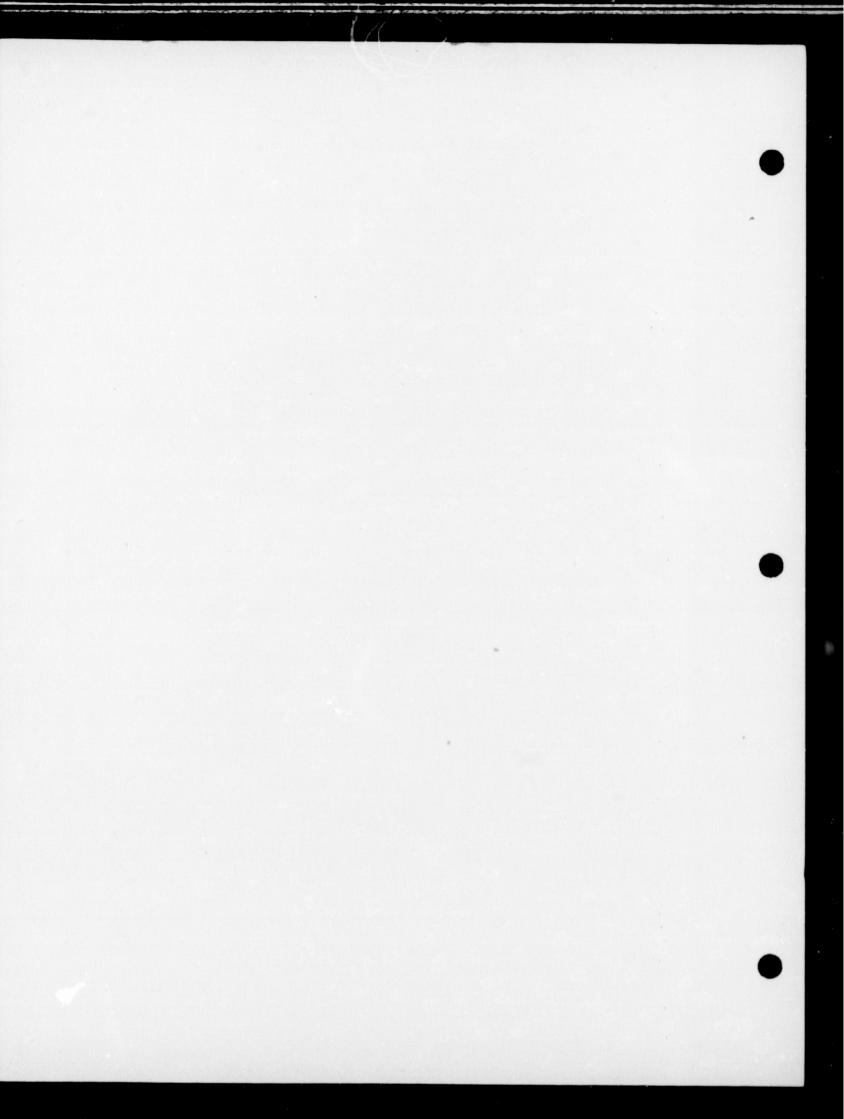
"And where did you see this car?"

"I saw it around the courthouse and I saw Frank Russo and his wife get out of or get into the car."

Very interesting if I don't sum up and tell you to look for things. Did he say he drove the car?

Did he say "I checked"? Does it ray the license of the say "I checked"? Does it ray the license of the say "I checked"? Does it ray the license of the say "I checked"? Does it ray the license of the say "I checked"? Does it ray the license of the say "I checked"? Does it ray the license of the say "I checked"? Does it ray the license of the say "I checked"? Does it ray the license of the say "I checked"? Does it ray the say "I checked"

Terribly dangerous alleged evidence by which the prosecution hopes to wind the spiny web, a flimsy web, an imaginative web about my client.



Of course, you are supposed to imagine that the yellow-and-black Pontiac that Agent Moore saw, and it was just a yellow-and-black convertible, in January, 1973 is the same car thast Agent Casella is talking about, which he described as white-and-black, even though they haven't told you who owned it, who was connected to it.

the government when they want to prove soemthing? I mean, you saw the motor vehicle inspector come down here quickly, you saw the government produce records from a motel in New Jersey. They have resources. If they wanted to prove it they could have proved it, they could have proved it, they could have proved who owned that car. They did they mot.

Remember, I talked to you. The burden of proof and the cunning invitation that might be offered to you to fill in the gaps, to fill in the gaps in the lack of proof.

Why wasn't John Barnaba here? Could he raise instantly any question about whether Frankie is Frank Russo? It that at the very least not strange?

Oh, it may be said later on, well, that identification by Agent Casella, he just wanted to make sure, maybe adding a little color to it, you know. To

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it. Ask the question. You can't ask it verbally, but expect an answer from the government when they sum up. Why didn't John Barnaba, who was here, testify about these facts, if it was indeed Frank Russo? What about the trips around the courtroom that Agent Casella took? What about, if you saw it -- and remember this, it is your recollection that governs -- if you saw it, and only if you saw it, Agent Moore sitting directly behind

be even a little more colorful he misidentified somebody.

Is there something you haven't been told in ou this case? Is there some reason to doubt, to guestion whether there has been proved in the case of my client guilt beyond a reasonable doubt in respect to this particular act or series of acts?

my client at the time Agent Casella allegedly identified

Frank Russo as the Frankieche doalt with. Trankie no coatt .

Now, use your imagination. I suggest to you that the government often is going to suggest that to you by the type of evidence that they have offered.

Use your imagination and imagine, if you would, that Agent Casella went over there, picked out my client,

"That's the man," and identified Warren Robinson, "That's the man."

Remember, a defendant has absolutely no

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 obligation in any way, shape or form to fill in the gaps, the lack of evidence on the part of the government. Your immediate reaction as Fuman beings is you should have cross examined about it. Well, if it is inadequate there is no reason for a lawyer ever to get up, to say one word, until he sums up to you. This is the time when we point to the lack of evidence. This is the time when we point to the fact that guilt has not been established.

But, again, use your imagination. Walked right over to Frank Russo, "That's the man." Walked right over to Eank Springer and said; "That's the Man," instead of identifying Warren Robinson. "Anybody that" Casella might have dealt with, use your imagination, imagine it was Frank Russo, imagine it was Frankie.

A few questions I asked about Barnaba's activities when Casella wasn't around. How, Barnaba terminated his alleged participation in a conspiracy, if you find a conspiracy, when he was arrested.

That's when he ended his life of crime and reformed himself. I asked him, "In respect of that transaction, do you know of your own knowledge whether he provided the drugs?"

He said, "Absolutely not."

I presume he meant to tell me, well, no, he

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did not, but the answer could be taken "I don't know."

He did testify that he didn't know what John Barnaba was doing. So imagine for a second that everything up to this point in the government's case was perfect, imagine for a second Casella doesn't know what Barnaba was doing.

I asked about fingerprints. "Did you have fingerprint analysis?"

"Well, we did, with negative results, we couldn't get any fingerprints off."

should have a reasonable doubt whether Barnaba supplied the drugs, it is not part of the conspiracy, imagining, of course, that all the other connections have been made by the government up to that point, it is not part of the conspiracy. Again, there could be a lot of simple answers perhaps, but that would be naive, to suggest to you that you would get a simple answer out of John Barnaba. But he wasn't here. Casella has no idea whether John Barnaba supplied the drugs he received from the person called Frankie, later known, he said, to him as Frank Russo. He doesn't know. John Barnaba wasn't here to tell us. You think John Barnaba would have been above something like that.

Questions, lack of vidence, a gap, a gap

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So even if you imagine that the rest of the government's case in respect to the identification of Frank Russo were correct, we don't know if John Barnaba supplied those drugs, who wasn't a member of the conspiracy, therefore, not a part of the conspiracy, I submit to you. No testimony at all about where that man Frankie got the drugs. Was that in furtherance of this conspiracy?

Is the government asking you to speculate?

I am talking about proof, evidence. Before you convict
a man you must have proof beyond a reasonable doubt.

All of us, I am sure, Mr. Curran, Mr. Phillips, his staff, all of the counsel on both sides, and the Judge has noted it, hwe been impressed by the way that you have examined carefully what has been put before you, noticing, of course, those tangible things when you examine exhibits. We as defense lawyers or I particularly count on you now to observe what was there and what wasn't there. It's just as important, remembering again that the burden is on the government, it never shifts. Ask yourself whether you are going to accept the cunning invitation to fill in the gaps to the prosecution's case.

Remember something else. When we selected you we selected 12 jurors. We didn't select one. What do I mean? I mean when you go into that juryrcom certainly I

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am sure the Judge will tell you to discuss among yourselves what you heard, but if you in your conscience and your mind believe something, be an individual, whatever way, whether it be for conviction or acquittal.

and remember this: we are both, the government and myself, asking for one thing only. We are asking for a fair trial. I am sure both of us -- and I can speak for the government in this respect -- are satisfied totally and -- and I will speak for myself and my client -- very appreciative of the time that you have given in respect to this case.

Our appreciation goes beyond our own personal interests.

It goes to our appreciation for a system which we can sometimes say is faulty, but trusting that it has never completely failed and trusting that it is going to be and is a good system, made good, secure, by people like your-selves.

So when you go into the juryroom remember we selected 12 of you. Whatever your opinion may be, do your duty as you see fit. That is all any of us can ask from you. If you believe in a man's guilt beyond a reasonable doubt, then it's your duty, your sworn obligation to convict. If you don't, it's your sworn duty and obligation to acquit.

As I said, we put our trust in you, we put our

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trust in our belief in the answers that you gave to us in respect to this case.

I just read yesterday about a juror in another case who had convicted somebody who said "knew from the beginning the man was guilty." I refuse to believe that that is possible in this jury, because I believe that you understand and accept the principles we have all talked about.

Now you have heard the very last words that anyone here will speak on behalf of my client, Frank Russo, a man, a human being. Be sure of your decision, whatever it may be. It's been said that cases are tried on the rocks of fact and not the clouds and fogs of suspicion and a juror must not reach a decision until he finds his feet firmly on the bedrock of truth. I won't take credit for those words, but what I am trying to get at is this: make your decision, be sure of it. Don't be in the position, regardless of your decision, of coming back and having to, after you render your verdict, later in your life, the next day or forever, ask yourself, "Did I do the right thing?" That question you must eliminate in the juryroom. is for your own self-interest. Come back from that juryroom with peace of mind. Don't come back, for your own sakes, with any doubt that you will have to interrogate

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yourself about in the future .

As I said, I am the last person to speak on behalf of Francis Russo, Frank Russo. No one else will speak for him except me. I thank you very much for your patience, your great tolerance in listening to me this morning. It's perhaps an insuperable burden, as the Judge would say, to listen to all of us for days on end, but by God, it's important. It's desperately important to Frank Russo, and I submit, quite frankly, and I am not being melodramatic, it's desperately important to you too.

I thank you very much. You have been very patient. I ask you to be patient through all of the summations. Question again the government in your own minds as they make their summation about the evidence or its lack and then render a true verdict, which I have faith you will do.

Right now, ladies and gentlemen, knowing what is to come, I can rest easy. As I say, the last words have been spoken until I trust I can hear the words most eloquently spoken by the forelady, "Not guilty." Thank you.

THE COURT: All right, Mr. Marshal.

(Jury left the courtroom.)

THE COURT: All right, gentlemen. Take ten.

hp5 Mr. Richman, you are going to start exactly at 11.30. MR. RICHMAN: Fine, your Honor. (Recess.) 5A (In open court, in the absence of the jury.) THE COURT: All right, bring back the jury, please. (Jury present.) THE COURT: All right, Mr. Richman.

MR. RICHMAN: Your Honor, ladies and gentlemen of the jury.

You will be hearing a lot of summations in the next three or four days. In fact, you will probably become experts in summation. My summation will be, I hope, like the proverbial miniskirt, long enough to cover the subject but short enough to keep it interesting.

This trial has been a very difficult trial. It has been difficult for all of us. It has been long and arduous, time-consuming and a lot of times very heavygoing.

Before I forget, I want to thank you on behalf of myself and Benjamin Tolopka for your attention and the sacrifices you have made. I know it is not easy being locked up as jurors for so long a period of time. It. hasn't been easy and I know it. I only ask that you be patient a little longer, because before the end of the case Ben Tolopka will be entirely in your hands and you will be able to make the decision solely.

By now I hope you know that I represent Benjamin Tolopka. Ben is the retired police officer.

In a case of this size, the attorney's biggest fear is that his client gets lost in the shuffle. times you may not remember. There are seventeen people

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here and it is difficult to see.

Frankly speaking, I'm here six weeks myself or seven weeks and I don't know all the defendants, either recognizing them or by name. I don't even know what is charged against each of them. All I know is what is charged against my client.

Here we have seventeen men before the Court charged with conspiracy, essentially. The Court will charge you as to what the law is on conspiracy. He will tell you what conspiracy is and isn't.

But sometimes, I feel, that conspiracy, like beauty, is in the eyes of the beholder; sometimes it is there and sometimes it is not. In theory it should be the most difficult of all charges to prove, because conspiracy is something theoretical done in secret. But in practice it seems almost to be guilt by implication, and over the past few years it has become almost a darling of the prosecutor's nursery. It brings people in here and dumps them around the table and before you know it, whether you want to or not, you are assuming a conspiracy exists because, heavens, they are all sitting around the table and no one would put them around the table unless there was a conspiracy.

Well, nothing can be really further from the

truth, bacause in my client's case, as well as others here, he doesn't know anybody else. He never had anything to do with anybody else. Barnaba testified to that. And, by the way, that is the only man who testified with reference to my client. My client told you that and I believe they know it, too. My client doesn't know anybody here. But theoretically they make him part of a conspiracy.

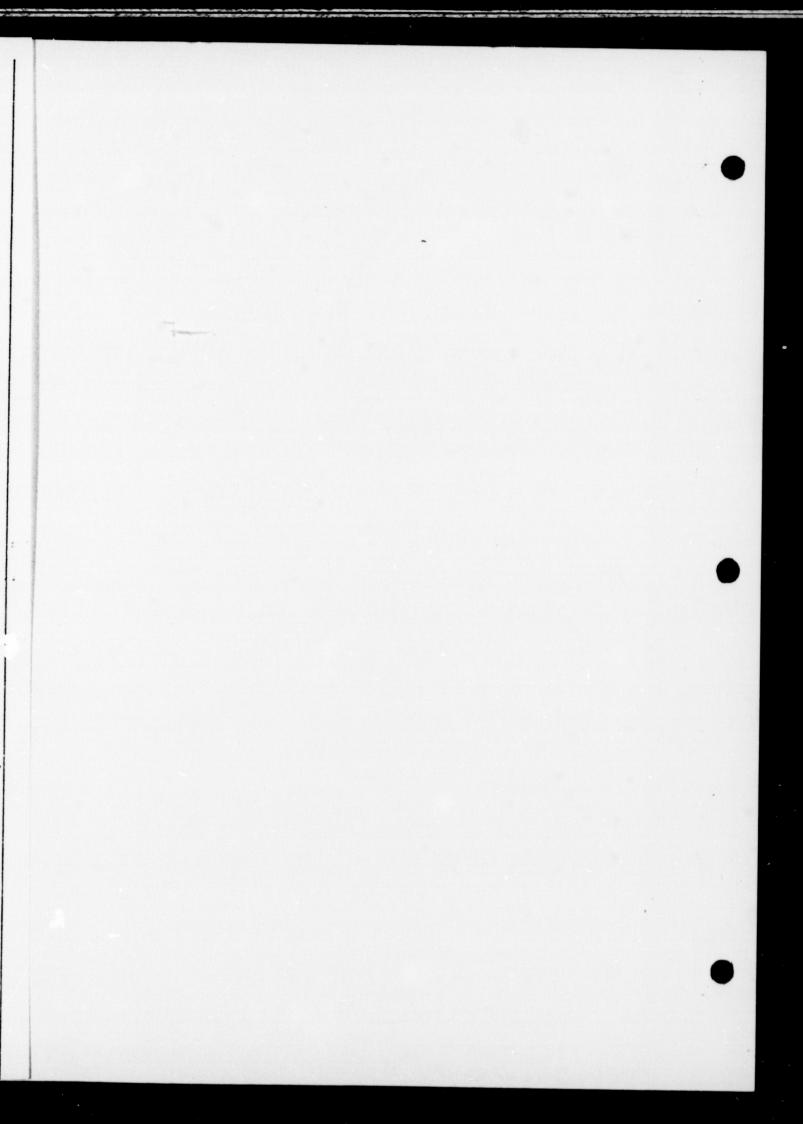
It seems easy to convict a man of a conspiracy than an actual crime or an actual act. And why should this be? Now is it possible? Frankly, it shouldn't be, and it is possible because of trials like this.

I sometimes feel that the prosecutor is trying to show their absence of facts in certain cases by dumping it together with others and you sort of lose the image.

Frankly, in all honesty, you didn't take notes, I took notes. I don't even know what went on in this entire case. I couldn't tell you what anybody really did or didn't do from the testimony. I don't see how it is physical possible. I can only tell you because my concentration is only related to my client. I really wonder how it is humanly possible for you to think clearly, and to see, you know, what all the issues are.

I am afraid of trials like this because it is like a massive display. People lose their individuality.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580



Remember this, individuals are on trial, not conspirators. People, individual people.

I am afraid that a precedent doesn't get set here where these trials get commonplace in other times, otherplaces.

Now, this is a narcotics case, essentially, and there is no one in his right mind who is going to come and tell you that narcotics is good. No sens person should even be in favor of it. It is a horrendous, terrible thing. And in summation Mr. Curran or Mr. Phillips, whoever sums up -- I don't know -- will probably make a great deal about how terrible narcotics is, and he is right. It doesn't have anything to do with this case. Narcotics stands condemned. Narcotics isn't on trial here, people are, people like yourselves. With reference, at least, to my client, who I have gotten to know, more like yourself than the people who testified.

I am sure my colleagues will point out when they sum up how important the role of a juror is and they will fill you in with all the things we have learned in law school to tell you about jurors and the duty of a juror.

I just ask your attention and your patience now and I would like to review with you just the case as against my client. I will try to do it briefly and succinctly.

Remember when I opened, I stood up and made my opening remarks, at that point I told you what my defense would be. I was criticized for it, but I told you. I said, "Ladies and gentlemen, my client couldn't have done it because he wasn't there," and I told you where he was.

Then I made a statement to you. I said to you,

"Remember, let's see how the government gets around that.

Let's see how the prosecution avoids the truth, circumvents

it."

I ask you just to keep that statement in mind.

I will refer to it later and I will bring something up.

When you go into the juryroom you are going to be given a full list of all the defendants here and the counts charged against them. Half-way down the list will be Benjamin Tolopka. If I can just make you remember, it is Tolopka, the cop, Ben, the policeman, so if you see it remember who it is, please.

My client is charged with two counts in this indictment. Actually, he is charged with one act, but two counts. It says that in August of 1970, the latter part of August -- emphasize latter -- they said it, I didn't -- my client supposedly received some narcotics from John Barnaba, unordered, unrequested and unpaid for.

That is count 7. But as a result of receiving

that, it makes him part of the conspiracy. So essentially it is the same act, but two different counts. That's all he is charged with.

I had told you in my opening, as I said, it couldn't possibly have been and I think I proved it because during the end of August, during the hours that Mr. Barnaba said, namely, between nine and midnight some time, my client was working at the track in Yonkars, and when he wasn't working at the track he was up-State with his family, as he was every summer, from May until October. But remember I told you how they get around it. I will point it out to you.

Now, the only witness as against Ben Tolopka was John Barnaba. You remember John Barnaba sitting over there. He's the man who deserted from the United States Army during the Korean War, not for any moral or religious reason, he just deserted because he didn't want to go to war. Other guys were dying and he was deserting. And he went to jail for it, as he should.

Then he comes out of jail. Does he go honest, stay straight? No, he goes into selling narcotics in 1953 or '4, long before it is fashionable. He gets in on the ground floor. He is going to make money on it. They catch him and they put him away.

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He comes out again. And no sooner does he come out and he is back in business selling drugs again, and they catch him again. They put him away again, this time for four and a half years. And after four and a half years he comes out on parole and, I don't know what he was doing, but he wasn't working, and they put him back in jail for not working, for violating parole. He does another eight months and comes out.

Does he go to work then? Well, he hasn't worked regularly since. He holds this job for a while and that job for a while, but before you know it, he is in bookmaking, he is in shylocking and then within four years after coming out of jail he admits to being back at salling drugs.

than half his life in crime. In fact, his entire adult life in crime. His entire behavioral system has no redeeming values at all. He admits to lying, or as he says, he is holding back, who involves his friends in cases — you remember Frank Lalli, he likes Frank Lalli, had no narcotics case with him, yet he involves him in another case. But Ben Tolopka, who he does not like, he really doesn't care for — do you remember the little argument we had whether or not he says he doesn't trust him?

Well, during the trial and during your deliberations later you will be able to refer or the court will say that you can hear the minutes read back to you.

On page 1576 -- I don't know why we were arguing -- Barnaba says no, he does not trust Tolopka, does not trust him. And here we have a two-time narcotics loser, a deserter, an admitted pusher, a Shylock and a gambler. He does not trust a cop. Of course not. Who is he going to trust? He is going to trust another criminal? He does not trust Den Tolopka.

But because he does not trust him, he's not going to involve Ben in this case. Now, that logic hind

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of escapes me.

He says, this Barnaba says, that in August, the latter part of August of 1970, Richard Forbrick ordered a certain quantity of narcotics. I think it was a quarter of a kilo of cocaine, and said it was for Ben Tolopka. He has no contact with Ben. He met Ben, but he had no narcotics dealings with him.

Now, this Barnaba is just starting a brand new narcotics business all over again. He is a careful man, he is a shrewd man, he has been away, he knows how to move.

He takes a narcotics order from this Mr.

Forbrick and delivers it to Benjamin Tolopka, not because he was supposed to, but because he couldn't find

Forbrick home. He was not supposed to do that.

There was no money involved. It was unordered and the man he knows to be a former detective, and he just goes and says, "Here is some narcotics for you."

To believe a story like that one would have to be dumb, deaf and blind. It is a concept that is beyond belief. It is absolutely incredible. But we are not finished with the unbelievable aspects of the case.

Mr. Barnaba does not tell anybody about this.

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He keeps it to himself. Not for such a short while, for four years. It's supposed to be one of his earlier deals in this supposed conspiracy and he doesn't tell anybody about it.

On November 14, 1972, John Barnaba is arrested. Mr. Rogers speaks to him and makes him into an informant. Does he disclose Tolopka then? No. Now, remember, he has terminated his dealings with Tolopka so he doesn't have to protect him. After all, he said in his direct case in October he didn't want to have anything to do with Ben. You remember that. So he doesn't disclose Tolopka on November 14, 1972 to Rogers. He testified before the state grand jury in June of 1973. Does he mention Tolopka then? Not this Barnaba, nope.

He speaks to Special Agent Torrey Shutes in September, 1973. Does he mention Tolopka then? No, he doesn't.

He testifies before the federal grand jury in October of 1973. Does he mention Tolopka then? No.

In fact, he doesn't mention Tolopka at all until over a year after he is caught. At the end of November he first mentions, "Well, I had a transaction with this fellow Ben Tolopka four years or three and a half years ago," one week before he testifies before a

federal grand jury, one month before this case started.

It is rather late in the game for a person you don't even like. We have a man allegedly cooperating with the government authorities and suddenly a month before the trial he remembers Ben Tolopka. It is incredible. But you haven't seen anything yet.

You see, in his debriefing in November, 1972, Mr. Rogers asks him, "Well, who were you dealing with?"

He says, "Only four people, "and he gave four names. He didn't give Tolopka's name, he gave four names.

And they asked him -- and also, if you wish to refer to it it is page 1531 and 1582, this conversation I am referring to now -- he says to him, "Well, what were you doing in 1970?"

Barnaba says, "Nothing. I was not doing anything in 1970."

Apparently he got started in 1971. A year and a half later he comes back with a transaction in 1970. What more could he lose? He was getting big cases. Tolopha, according to him, was nothing. He wasn't even dealing with him any more.

He says he does not want to get further involved. I mean, how much more involved does a man have

You see, Barnaba was lying by his own admission, because he said he didn't want to get Ben involved, nut he didn't tell you voluntarily until I dragged it out of him that in May of 1973 he went to Tolopka's house. He was wired up and, in fact, he called him on the telephone and his conversations were recorded, which weren't introduced by them. Do you know why it wasn't introduced? It had nothing to do with narcotics.

This pusher goes to Ben Tolopka. For what reason? To buy a watch for his daughter. But he is tricky. He says, "You got the stuff?"

So Ben says, "You mean the watch, right?"

He says, "Yeah."

He is trying to make it sound like it is drugs.

And even Barnaba says, "Well, I don't remember that, but,

yeah, it could have happened that way."

He is trying to get that conversation that is kind of questionable. You see, I don't know whether you can blame Barnaba so much because this is a man who is going to go to jail if he doesn't bring people in and he's got to buy his freedom with other people's lives.

Whether that is good or bad I am notgoing to go into.

This entire system of informers, I don't know, because they are buying their way out, and the more lives they

throw into it the greater assurance they will get that they wouldn't get time. But that is the system and that's how it has been working.

You know, I had a station identification type of thing at this point in my summation. There is a little story that I wanted to call to your attention in the Bible. I am pretty hung up on it. It is the book of The Apocrypha. That is a series of books, not in the Bible, that we excluded from the canonized portion of both the New and Old Testaments. There was one little story that is very brief and I will just call it to your attention just to make a point, the story of Daniel and Susanna.

This story is about there once lived in Babylon a man named Joakim who had a beautiful married daughter Susanna -- withdrawn -- married Susanna, and he was a very wealty man and he had a big courtyard and in the courtyard the judges of Israel at that time were to hold court each morning.

The two elders of the community were appointed that year and it was written that wickedness came over Dabylon. These people were not particularly straight. And they lusted after this Susanna and they were aware after court was finished in the morning

all the people would leave the courtyard and then she would come out and take her bath.

One day they confronted her and they said,
"Be with us or we will accuse you of adultery and then you will be stoned to death."

And she refused and they accused her of adultery, both of them.

You see, there they needed corroboration, here you don't. There they needed two vitnesses, in this court you don't.

Now, the point of the story of the story is that she was condemned. She was found guilty of adultery on the testimony of these two so-called witnesses.

And as she was being led off to be condemned, Daniel -- that was the Daniel from the lions' den -- he came forth and said, "Hold it, let us make an honest inquiry over here. Take one of the witnesses over there and let's inquire as to where this alleged event occurred.

They put the question to one of these judges and said, "What happened? Where did this occur?"

"Well, she was submitting to the lover's or ardor of this young man under the clove tree over there."

Then they brought the other witness forward and they said, "What happened?"

He said, "She was submitting to the ardors of this young man by the yew tree over there."

It wasn't a big difference in their story,
it was little things. And these men stood convicted out
of their own mouths by little errors in their testimony
and they were condemned to death and Susanna was saved.

I really brought it to break up the continuinty of the trial here, but ti also makes a point. It makes a point that by little things can we tell where a guy is lying.

John Barnaba gave four different stories of events on the night with reference to Ben Tolopka.

He gave one story to Torrey Shutes, another story to the grand jury and two different stories here in court.

You see, one of the stories was that when he brought the narcotics to Ben he went down to Ben's basement. By the way, a basement he doesn't describe. And you can look at this in evidence when you are in the jury room. You can ask for all the evidence that Ben introduced. Take a look at it. He couldn't describe it. It is there for you to look at.

ment, although Ben did not expect him, was a black man sitting waiting. What is he waiting for? Barnaba would have you believe that he was waiting for narcotics. According to the story he told here, the black man cut this paper package and tested narcotics.

Why? You see, there is no narcotics in this case, at least as against Ben Tolopka, none at all, and the way they have to get it in under a case, certain law, you have to testify that there was some kind of knowledge that it was narcotics. So Mr. Barnaba, appraised that situation, a jailhouse lawyer, puts the man in the basement so that he can identify this quantity of

goods as narcotics.

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 I think you know, this Barnaba is one of the lowest moral characters I have ever seen. I can't attack him too much because I think it is apparent to you all.

rested, "I'll do anything.. I don't want to be sent back." And suddenly he is given a number and he becomes an informer, and he knows that he has to trade others' freedom for his own.

He moves slowly at first. First he brings in his friends on tape recordings with reference to conversations. No narcotics is bought or sold. Then he involves others. But his keepers, they want more, and he is going to have to give them more.

But after a while Barnaba gets very confident.

In fact, he gets a feeling of power. He is almost like a god, because on his word alone people stand convicted or at least accused. Just one man's word.

First he takes care of people he owes money

to. We have mentioned that. Not in this case, in

other cases. Then people he has arguments with or he

doesn't trust or he doesn't really like. That's how

and why Ben Tolopka is in this case, nothing else, be-

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cause aside from what Barnaba says there is nothing in this case. There is no narcotics, there is no tapes, there is no agents, there is nobody else who testified to these events other than John Barnaba.

Suddenly you cloak a man who is a total liar, a total thiel, a total degenerate in every sense of the word, and you give him the power of life and death.

That's freightening and that scares me.

You know, if this case was treated by itself, if Ben Tolopha was here with nobody else around, you ladies and gentlemen of the jury wouldn't give five minutes of credibility to this person's testimony.

But he testified five weeks ago and after a while you lise all continuity of what is going on and he gets lost in the shuffle, and that's why he was dumped into this case and that's why others were dumped into this case.

Now, I don't know the truthfulness or honesty as to other cases.

I am not arguing for other cases.

But this is too massive a case to be handled properly.

So much hangs in the balance. A man spends his entire life being a decent human being, does great for society, and can be accused on one man's say-so.

You know, when we opened and I told the defense of Nr. Tolopka and said he couldn't have possibly

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been there the government probably went back to Mr.

Barnaba and said, "Look, you told me about an event in

the latter part of August. It couldn't have happened."

He says, "What do you mean, it couldn't have happened?"

"Well, Tolopka was working, he was away."

Eo Barnaba thinks. He comes up with another transaction in October. Not a transaction. He says, "I never gave narcotics to Tolopka, I never received narcotics from Tolopka," but he had an argument with Tolopka about certain narcotics which was brown, which allegedly was returned to Porbrick, Forbrick said it was returned.

lars, which the government has to submit to lawyers.

It is not mentioned in the indictment. Why was it mentioned late in the trial? You remember I told you earlier, "Wait, let's see how the government gets around this, how the prosecution is going to try to inveigle Mr. Tolopka into this case." That's how they are doing it.

I want to read something to you, very briefly.

I am questioning Mr. Darnaba concerning "When did you

come up with this story, Mr. Darnaba?" and I asked him a

question:

"You sure it wasn't when Mr. Curran or someone told you that Ben Tolopka couldn't have possibly been where you say he was in August of 1970?"

He says, "No, sir."

And I say, "Isn't that your way of getting around his story?" meaning Tolopka's story.

And his answer is, "Yes, sir."

It is right here in the testimony, page 1620, line 11.

So now we know what we are dealing with.

We are dealing with the prosecution trying to cover up their own records. They know they got the wrong man, they shouldn'g have involved Tolopka in this. But now they are trying to smooth out their errors, they are trying to cover up.

You remember Ben Tolopka took the stand. He submitted himself to cross examination by Mr. Curran. He told you he was 55 years old, that he is married for 35 years. That he deserves a medal for even by itself.

He has two children, one of which is a married daughter, and has four children.

He has been working 40 years. He owns his own home in the Bronx, which he purchased in 1951,

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\$11,500.

He was a police officer and rose to first grade detective until he retired in 1966, that he has 41 citations and is one of the most decorated men in the department.

And then we produced the list of his citations. Captured a fleeing holdupman, disarned and arrested a holdupman, disarmed and arrested a man attempting to shoot another, pursued and arrested a youth who together with a number of others had caused a disturbance and fired two shots at officers, apprehended a burglar, received the Charles H. Sabin Medal for valor, apprehended a man who had fatally shot another, located three men who had committed an armed robbery, after a struggle each one was disarmed of his weapon. I can go on for 41 different citations he received. It is in evidence. You Take it into the jury room with you and look at it. you tell me if this is the type of man who would be involved with a person like Barnaba.

All this can go down the drain, this entire life of decency, because of this one man's statements. No narcotics, nothing else.

Then we interrupted Ben's testimony and put Mrs. Tolopka on the stand, and if you think I was working

toward your sympathy you are absolutely right. She testified in a wheelchair. She is paralyzed. She was paralyzed in May of '73. He feeds her, washes her, dresses her, cleans her, shops, cooks. Married 35 years. This sounds like a type of heinous man, doesn't it.

But she also tells us about the system in 1970 when Ben was working at the track one week on, one week off. So he couldn't have possibly been where Mr. Barnaba says he was in the latter part of August.

And what do they do up at the country house?

They do a little planting. It is not a big house,

nothing fancy. I don't think the prosecution even meant

to allude that it was a fancy house. It was an

ordinary house. From May until October Ben doesn't

spend any time in the city except when he is working, and

he is working at night.

You remember also that Mr. Curran didn't even question Mrs. Tolopka, not one word. Well, he is going to say, "Well, it's obviously a wife who would cover for her husband." Is that so obvious?

I left him open with a question. I said to her, "Mrs. Tolopka, would you lie for your husband?"

She said, "No."

Ordinarily you come back and you say, "You mean you wouldn't lie for your husband?"

That's a technique. He didn't even do that. Oh, he is going to say it's unimportant. If it is so unimportant why didn't he confront the witness when he had her?

The next witness was Mr. Jimmy Stasio, a neighbor of Ben's, a little, nervous man, honest man.

L8 years straight working the same job, fixing motion picture cameras. He talks a little too fast. He doesn't come across as polished as some of us would like. But what do we measure a man by, his life or the way he talks?

You know, Mr. Curran had him down in the office here. They called him down in the office.

Ben was not proud of the fact that he was arrested and didn't tell his neighbor that he was arrested, until Mr. Curran did, and said, "Come on, what can you tell us about this guy Tolopka?"

He says, "He's a great neighbor, he helps everybody."

He says, "I don't want to hear that. We're not going to use you. Didn't you see any narcotics being mixed in the basement?"

He says, "Ho, I never saw anything like

that."

You see how Mr. Curran tried to put these words in his mouth.

Now, Mr. Curran or Mr. Phillips, whoever sums up, might try to make something of that. I think you should give it the credibility that it deserves.

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Then we had Mr. Tolopka's daughter on the stand. She told us just about the system and she knew it was Sunday morning he came up because he brought the buns and the paper, which was later substantiated by Mr. Malerba, who works at the track.

Then Ben went back on the stand, Ben Tolopka. He told you how he had met this Barnaba and how Barnaba tried to cheat him out of \$300 when he tried to buy a car, that his car was burnt up in May and he went to the used car lot on Boston Road and he met Barnaba, who called himself Bonneville, and he believed his name was Bonneville. He premised him a creampuff. Some creampuff.

So Ben gave him \$300 when Barnaba came to his house and we don't see Barnaba again until November of '70, after these alleged events took place, when he has an altercation and squeezes the \$300 out of Mr. Barnaba.

So it couldn't have happened. The entire events couldn't have happened, because in the summer of '70, one, my client was working or he was up in the country, which has been substantiated, and by his own testimony, he never even saw Barnaba.

You know, the government tried to be slick in one thing, I will tell you quite honestly. They bring in this man from Motor Vehicles, something about a car

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with Ben because of the date of October, 1973. It was October 3rd. The reason I remember the date is because my birthday is October 3rd.

Ben was working at the track that day too.

But what they failed to do -- they corroborated my client's story. They did it for me and I thank them. They proved my client during that period of time was looking for a car. That's exactly what we were saying, that he got a car in October. That's right, they did it for me.

Then Tolopka testified as to the days he was working and the days he was off. That is all in evidence. You have the sheets you could look at in the juryroom. We put all this evidence in, except for the time sheet, which Mr. Curran allowed in or put in.

But one thing on this time sheet. It showed that on August 4, 1970, Ben was off, he was out sick.

Now Mr. Curran is going to try tomake something out of this, that his pet, Mr. Barnaba, was really wrong, he didn't mean the latter part of August. Now they are going to bring it up to the early part of August. But that is not what he is testifying to. Is he trying to impeach his own witness?

He is going to say, "Well, he was out sick, and although Barnaba didn't have an appointment, he knew or he came down to Ben's house unannounced, unexpected."

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It doesn't ring true and it doesn't hold water.

Both events that Mr. Barnaba testified to, the end of August, the beginning of October, are equally impossible. Ben was working the beginning of October, up till the 3rd, then he went away until the 12th. It's in the records. You can have it. Check it through. I want you to. You tell me whether a man living in his house, a little house in the Bronx, is the man these people would try to make him out to be. Or are they covering up their own errors?

You see, Ben Tolopka is a decent, honorable person. We told our defense from the first. We are not hiding a thing. We didn't wait until he took the stand to give our defense. We told it to you the minute you sat down here.

I also promised you I wouldn't talk to you for ten days after I gave you my opening and I kept my promise there too.

But now we are trying to attack a man by implication. We have Mr. Curran saying, "Well, Mr. Tolopka, you got money, don't you?"

He says, "Yes, I have thirty, forty thousand."

He is not hiding it. Does that make a man a

criminal, to have thirty or forty thousand? He has a little

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piece of land, he has a car.

But listen, I will explain. Very simple.

The man has it all in savings accounts. He has put it in over the years, because if he didn't put it in over the years on a regular basis I am sure they would have subpoensed those records and had them here just to show you my client was lying. Also, if he sold narcotics in August of 1970 certainly they would have had some cash going into the bank account then. Where's the records? They didn't produce them because it doesn't show anything.

Now, with reference to this money. You don't have to be a mathematical genius to work it out. My client retired 1966 and he got a \$13,000 lump sum which he deposited in a savings account. At 4-1/2 or 4-3/4 interest compounded, like all the savings banks do, and as Mr. Tolopka testified to, that 13,000 is now 20,000 today.

In addition to that, Mr. Tolopka earns 13,000 a year. His income tax are in evidence. Check them. He earns \$13,000 a year plus he gets Unemployment plus he sells a little jewelry on the side. So you figure around fifteen, because Unemployment is not taxable. It's around \$15,000 a year.

It's only him and his wife. He has no rent to pay. The mortgage is no mortgage. That's roughly 25

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per cent of your income. You can't save \$3000 a year on \$15,000 income? Half the food that he eats is homegrown, which is preserved.

So he tries by implication. Now, \$3000 a year since he is retired, eight years, comes to 24,000, or with compound interest it's 40,000. Together with the other twenty you have 60,000. And what about all those other years from 1951 through the time he retired? Doesn't he save anything?

It's not surprising that he has this much money. He should have twice as much money if he is as cheap as he says he is.

Now, you look at those tax returns, you look at this evidence, and you tell me whether the entire story is based upon clouds and innuendoes and lies.

Now, Ben took the stand. He didn't have to.

He took the stand, opening himself up to all of Mr. Curran's experience, which is great.

Oh, I am sure that Mr. Curran will point out that my client has experience testifying as a police officer.

Does that make his statements less truthful?

You know, we are living in an age where being a policeman by implication seems that you are a criminal. This man doesn't have a mark against him. They couldn't

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find anything. And they went through his record. We subposenaed it and the whole record was here. His entire police history was in this courtroom. You see what they have to show for it?

41 citations.

Doesn't a man's life mean anything? If you put it on a scale, Ben's life and his word as against this man Barnaba's life and word, what could you believe?

Can you find anything else but reasonable doubt as to Ben's innocence? If you did anything less I would question the capability of the jury.

Can a person, a good person, conduct his entire life and have it destroyed by one man's word? I emphasize, there's no narcotics, there's no tapes, there's no other testimony, there's no agents testifying, there's nothing, just a man's word, no pictures, no nothing.

You know, the meaningful things of our lives don't occur on the battlefield. They occur in svery-day life. And you, you people here, have an unusual role to play. I would say don't let the prosecution get away with this cover-up, this farce, because if you do who among us is safe. Tomorrow it's him, tomorrow it's someone else. One man's word can accuse anyone, and that man can go away for that, go to jail for that. I don't want to get overly dramatic because I have trouble controlling my emotions

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sometimes.

The last two witnesses were Frank Malerba, the man who worked with him as a police officer and was his boss at the track, who substantiated everything about the working, substantiated everything. He also told you that he was a damned good cop and he thought he had more citations than he had.

The last witness was Jack Mullins, the confidential investigator with the Attorney General of the State of New York, who knows Ben for 40 years, and he says, this quiet man says that Ben possesses a wonderful reputation for honesty and truthfulness and he was a darn good cop.

What more could be said about a man? It's more like a testimonial dinner.

How could Ben have done these things? I say he couldn't and didn't. He doesn't know anybody here. He couldn't have been involved with anybody here. How could he be part of the conspiracy? He didn't even know it existed, if it really existed.

Well, the prosecution is going to say that.

Forbrick had something to do with it. Where is Forbrick?

You might as well say Howard Hughes had something to do with

it. It's the same kind of inverted logic. The whole

concept escapes me, the whole reasons for this nonsense.

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I have rambled on long enough. I am going to terminate now. I just want you to use your logic, your natural intelligence and your common sense. I don't think these people have proved anything, and certainly not the guilt of Ben Tolopka beyond a reasonable doubt.

I want to just say in closing that if I have done anything to offend you don't hold it against my client.

I am marely an advocate.

Just keep in mind who was saying what and what was said and when Mr. Phillips or Mr. Curran talks to you please remember what I said. I think if you are fair-minded people and intelligent people you can't have any other choice but to find him not guilty.

THE COURT: All right Mr. Marshal. At this point, ladies and gentlemen, I think you will go to lunch.

(Jury left the courtroom.)

THE COURT: According to my score sheet, Mr. Rosenbaum, you go next. Would you be prepared to start off this afternoon?

MR. ROSENBAUM: Yes, your Honor, but I had spoken to Mr. Sunden and I believe he said he would take next and I will follow him. I spoke to him this morning.

Your Honor, Mr. Sunden is arriving now.

THE COURT: I just want to make sure that at 2

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2 o'clock we have someone starting off. Mr. Sunden, do you think you will be prepared to start at 2 o'clock?

MR. SUNDEN: Absolutely.

THE COURT: All right. Mr. Rosenbaum, you will follow.

MR. ROSENBAUM: Yes, your Honor.

THE COURT: Then Mr. Warner. I don't know if we will get any further than that today.

Next on the list is you, Mr. Rosenberg, Mr. Lopez, Mr. Ellis, Mrs.Rosner, Mr. Fisher and then Mr. Siegal.

MR. SIEGAL: When?

THE COURT: Mr. Siegal, I have permitted and will permit summation for any time that any defense counsel wants to stand up and sum up. I just suggest generally that the shorter they are the more effective they are. But I am not going to hold anyone. Everybody has their own style.

> All right. Let's be back at 2. (Luncheon recess.)

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AFTERNOON SESSION

2.15 P.M.

(In open court, in the absence of the jury.)

THE COURT: Mr. Sunden, are you ready?

MR. SUNDEN: I am.

THE COURT: All right, bring in the jury.

(Jury present.)

THE COURT: All right, Ar. Sunden, you may procaed.

MR. SUNDEN: Thank you, your Honor.

Madam Forelady, Judge Duffy, counsel both for the defense and the government, and ladies and gentlemen of the jury.

As you know, my name is Gary Sunden and I represent Mr. William Alonzo. Just to make sure there is no doubt in your mind, Mr. Alonzo is the gentleman who is seated over there in the green shirt.

As you know, this is the last chance that a counsel for a defendant has the chance to address anyone here. The order of summation in a criminal trial is always that the counsel for the defense goes first and then the counsel for the government, the prosecution, goes last. Of course, this presents a lot of advantages to the government attorneys because they have heard what the defense counsel say and

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they can shape their arguments to you based on what is said and, of course, there is no opportunity for a defense counsel such as myself to come back for rebuttal argument or for five minutes to clarify something, so, of course, when I talk to you I must, to adequately represent Mr.

Alonzo, attempt to anticipate the government's arguments that they might make. So, of course, naturally this means being a defense attorney and being in this position that I must try and cover the entire field of what I anticipate the government might say about Mr. Alonzo.

Now, getting into the case, the first thing I want to say is that at some point, ladies and gentlemen, you are going to retire to the juryroom to deliberate and the entire jury and the forelady is going to be presented with a form and at some point a ter deliberating you are going to take a vote and you are going to check off how you vote guilty or not guilty as to each defendant. And the first thing that you will notice looking at it from the point of view of Mr. Alonzo is that there are many counts in this indictment. In fact, I believe the jury will be submitted at least 25 counts. And among those 25 counts is a single conspiracy count and the balance of the counts are all substantive counts, counts of possession of narcotics, counts of sales of narcotics and various other

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substantive counts.

Alonzo is that he is not named in a single substantive count in this entire case. You will see a long list and there will be many places to check off and his name will be mentioned once, that is in the single conspiracy count, and that is all he is charged with in this entire trial. He is not charged, and I ask you to take note of this, he is not charged with any sale of narcotics, he is not charged with possession or possessing with intent to distribute or facilitating distribution or anything like that, he is charged in a single count here.

The question has been raised, well, what is the conspiracy here, basically. Of course, his Honor will instruct you on that, but succinctly put, there is going to be an allegation that this was a conspiracy or an agreement to distribute narcotics. And, of course, we are present here at the trial and the first thing I want to tell you regarding Mr. Alonzo's defense is this:

He, after he was arrested and he was arraigned, he was brought before a judge, he entered a plea in this case of not guilty. What that means, in effect, is that Mr. Alonzo has already told the jury that he is not guilty in this case. And, of course, under our system of law,

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an accused persor is not under the obligation to testify.

Judge Duffy will give you instructions on that point and

I ask you closely to listen to those instructions.

But the cardinal point here is I want to say this here:

Mr. Alonzo has not entered a plea of guilty here, in fact, he has done the contrary, he has entered a plea of not guilty and he has told you, in effect, that he is not guilty of the charge of conspiracy.

Another point in this trial is, of course, that we all, as human beings, have been through a long cumbersome proceeding here. It has been many wacks. The one wary point that I think must be stressed here is that although it has been, in terms of how all of us might experience it as human beings, it has been one gigantic sequence, and in fairness to every single accused person sitting here in the courtroom, it is an individual separate trial as to them. So you, the jury, are really pressed with the very difficult burden of separating in your minds the fact that each human being charged here, and specifically Mr. Alonzo, he is on trial on a separate trial here. And guilt, as it is alleged and as the government has claimed it has shown, guilt must be an individual thing.

Under our system of law and under our society,

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we have fortunately done away with the concept of guilt by association or by slur or by something that is less than individual guilt shown. So in fairness to Mr. Alonzo in your deliberations, I ask you, ladies and gentlemen, to please bear that in bind.

When an attorney gets up and says things like that, of course, every juror intends to be fair, but we are all human beings and, of course, we have all sat here and we have all listened to everything that has been said all this while and it is difficult, I think, for any human being and I think it is particularly difficult for a jury in a case like this to bear something like that in mind. But it must be done here to be fair to Mr. Alonzo, and that's what I am asking of the jury.

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Of course, another fundamental point is that anyone who is charged with a crime under our system of law is presumed to be innocent.

Now, I am well aware of the fact, ladies and gentlemen, that you have been sitting through surnations and you got a couple of more days to go and I don't want to belabor obvious things. I think the whole concept of the presumption of innocence has been well articulated in some other instances here and I don't want to belabor that. I would just remind the jury, though, that that presumption of innocence clothes Hr. Alonzo as it does anyone else who is charged with a crime.

of course, when you have a trial like this
it is not done helterskelter. Under our system of law
the trial is done pursuant to a time-honored procedure,
and the testimony at trial, the legal standard, the cutting
point, as it were, when a person is charged with a crime
is that a person cannot be found guilty unless he is
proven guilty beyond a reasonable doubt. Those are the
magic words in a criminal case.

What that means is in our society we are not going to take away the liberty of a human being by just the prosecution agents, whoever they may be, coming in and showing some proof or an arona or some flavor or

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just some showing, some modest showing. Under our system of law, unless there is proof beyond a reasonable doubt, a man must be found not guilty. Of course, even if there is just a single reasonable doubt, fortunately under our system of law a person accused is entitled to a judgment of acquittal.

Of course, then that brings into question: what do we mean here by a reasonable doubt?

Judge Duffy will define it to you, but one way in which it has been accepted and which it has been put in the law courts is this, that a single doubt is a doubt which would cause any one of us as a normal, prudent person -- which would cause us to hesitate in an act of importance in our own personal lives.

I will refer to that later after I attempt to discuss the evidence from the point of view of Pr.

Alonzo, but I ask you, please, to bear that in mind.

When you sum up as a defense attorney I want to try and review the evidence as it pertains in the separate trial here of Mr. Alonzo. The first thing I want to say -- I mean, you have been sitting here all these days, you have heard a lot of different witnesses. A lot of them had nothing to do with Mr. Alonzo.

The evidence against Fr. Alonzo comes from

just two sources in this case, ladies and gentlemen, and just two sources alone, and those two sources are the word of Jirry Provitera and Harry Pannirello, nothing else.

Mow, bearing in mind the standard in a criminal case of proof beyond a reasonable doubt, I want to try and analyze the evidence against Mr. Alonzo separately, not the evidence against anybody else, whether strong, weak or whatever, just the evidence against Mr. Alonzo, because that is what the jury is going to have to do when they sit down and deliberate in this case.

that at the end of this case the government is going.

to give a summation itself and I very much doubt

honestly if the government is going to attempt to rigorously
separate Mr. Alonzo -- he is entitled to a separate trial -but separate and discuss the evidence just against him.

I think the government, frankly, the prosecution agents
here, are hoping that the jury, and they are counting on
the fact that the jury is going to lump together all these
men and attempt to somehow by a suggestion or an aroma and
a flavor that the jury will find people such as Mr.

Alonzo guilty in this case.

You know, when you go on trial there appears

neys for the defense sitting over there and all of the defendants, there they are, sitting around the courtroom, and that can't but have a visual impact on the jury.

And yet that visual impact means nothing. I think that sometimes the government is counting on that. I mean, the charge here is conspiracy, acting together, and of course, in the consequence of a trial courtroom the defendants, if they are going to be present at their own trial, well, they are directed to sit together in a courtroom. That implies nothing here.

If an innocent man was charged in this indictment he would be sitting right over there too, and I
ask you to recall the words of Judge Duffy when the jury
was selected here, that if an innocent man is brought
to trial he would want a jury, a fair jury.

Let us look at the evidence as it pertains to William Alonzo and take it one by one. I would like to take it more or less chronologically as the evidence came out against him.

In terms of the chronology of this story,
the first evidence was the word of Provitera. Provitera
said, if I may recall briefly, Provitera said that
Pannirello spoke to him, he said, "Let's go up to an aparty

ment on University Avenue," he said it was some time in January or February of 1972 and he was introduced to, among other people, Mr. Alonzo, and you recall, of course, he misidentified Mr. Alonzo. Then he claims he went into a bedroom, he claims he said, according to his story, it was Butch Ware's bedroom and he saw a fellow named Basil and Marry was there and some heroin was passed from Marry to — from Jimmy to Marry to Basil. That was his story about Mr. Alonzo.

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Well, the first thing to do when you look at this story is that the jury is going to be called upon to determine the credibility of this witness, and Judge Duffy will give you some instructions on this, but I would just say this, that all of us in almost every stage of life every day, we are called upon to make little credibility determinations every day, little requests that are made, people we don't know who might ask something or ask a question right off the bat, and we all have to make little or large, semetimes, credibility determinations at every point, and so this is not going to be a novel process for you as a jury. But what is going to be novel about it is that in determining the credibility here the liberty of a human being for potentially up to 15 years is at stake here.

How, let's look at Provitera. You saw him testify. I mean, that is one of the guarantees we have. Provitera sat there. He had a nice easy manner of speaking. I can't say he didn't. In some ways I guess he was a low-keyed guy and in some ways disarming, perhaps even a charming guy in the way he spoke.

But I would say this to you, ladies and gentlemen, that the nanner of a guy speaking, of a human being speaking such as that is not a test of any sense that jha 4740

the words that this human being says are believable.

The way a person looks as a first instance is not a test
of any credibility whatsoever.

might consider, just a thought thrown out. This case, for instance, I point out the fact that in national life these days there has been this great reference for the last year to what has been described in other words as the Watergate situation. Now, this case is no Watergate. It's got nothing to do with it. But among -- how shall I put it -- the lessons that anyone can learn from Watergate is that even people who appear to be the most commendable sort of people in our public life are capable of gross distortions. I ask you to think of a human being such as, let's say, Jeb Magruder. You can all picture him --

THE COURT: Ir. Sunden, I think we ought to get back to this case.

MR. SUNDEN: Thank you, your Monor.

attempting to determine his credibility let's look at what he said. Well, he told that story about Mr. Alonzo. Well, let's see what else he said about him.

Well, the first thing he said was that he was

 that he was asked did he make any notes or memoranda or anything about that incident. Well, you may recall he testified that he did not.

Of course, I guess it would have made his story a little bit more believable if he had something to corroborate it, but he doesn't. Haybe that doesn't make him a liar. I don't know. That's something for the jury to determine.

Then he also said that he had this meeting.

So then the question was put to him, "Well, do you remember the exact date of the meeting?"

And of course you may recall he testified that he didn't remember the exact date.

Now, what does this mean in terms of proof beyond a reasonable doubt? I mean, do we convict a man? I don't know. It is something for the jury to consider. Then he was asked could he even be 100 per cent sure of the exact month of the meeting. Well, you may recall he testified that he couldn't.

Now, again I say to you what does this mean in terms of reasonable doubt? Well, it's something again for the jury to consider here.

Then finally he was asked -- he claims he had this meeting with Mr. Alonzo -- he was asked could he

identify Mr. Alonzo in the courtroom, and you may recall that very readily he identified a human being. The only thing is he identified a human being who wasn't Mr. Alonzo at all. He identified a human being who he admitted he had seen at four owher times a while before that, but he couldn't identify Mr. Alonzo.

At a later point then he claims he identified him. Of course, he also admitted that he had
been shown some pictures by the government.

Now, again I say to you what does this mean?

Does this mean that this man is lying? Each one of these little things, does that call into question this ... man's credibility? That is for the jury to determine ... here.

Then finally, regarding his story that he went into this bedroom, well, there is no question that he had some heroin in that bedroom. There is no doubt about that. Of course, according to his story, there is no doubt that Harry had some heroin.

And then you recall he testified who was the herein passed to. He wasn't asked the name of the person it was passed to. It was just a wide-open question, so that he was given the whole floor, who was the herein passed to. And his testimony was Basil.

Now, what do we do with that? I mean do we say, well, let's see now. How can the government — does this mean Mr. Alonzo — is he still guilty of something anyway? This testimony of Provitera, is this the kind of thing you put a man in jail for? I don't know. But suffice it to say the government has two legs in its proof against Mr. Alonzo and this is half of it.

The government I submit to you is going to argue that this means that Alonzo was part of a delivery to the Bronx, whether he touched the stuff or not. Of course, I have to anticipate what Mr. Phillips says, but I bet he is going to say that.

Now, the question is how can we decide whether this is believable or not. I mean, we can't open up Provitera's head and look inside and know whether that is true or not. The question is what can we do here. This is testimony under oath. Provitera got up and said under oath that Alonzo was there. He doesn't have anything else to substantiate it, but he said it under oath.

So the question is what can we use as away to look at this and decide whether it is true or not. We haven't got anything else.

Well, fortunately we do have one thing that

we can look at regarding Provitera, because fortunately, ladies and gentlemen, the man testified under oath previously. But he did not just testify under oath about something general connected with this case. As it turns out, he testified under oath as to precisely this situation. So that we do have a way we can look and see if Provitera is telling the truth about this incident.

He admitted that he testified under oath before the grand jury on this very question and I ask you to recall the testimony on page 3239. He was asked the question:

"O Do you recall being asked the question,

'Did you deliver narcotics to anybody in the Bronx'?

Were you asked that question?"

Provitera's answer was, "Yes."

"Do you recall answering?"

Answer, "Yes, I did."

vitera's head, we are fortunate enough to have some prior sworn testimony. He got up in court and swore to tell the truth here to you and now we have a way to cross check this. We don't have any other independent evidence to check whether what this guy said is true, but

we have something, we have prior sworn testimony by
this man, d if his sworn testimony, if the oath he
took in court means anything here, let's see if it comports
with what he said in the grand jury.

Then, of course, right after that, before the grand jury, he was asked another question, and you heard this question put to him: "And do you recall being further asked the question to whom did you deliver it in the Bronx? Do you recall being asked that question?"

And he said, "Yes."

So right now we have a way to see if therevis any credibility in Provitera about this story as to Alonzo.

I am not talking about anything else that Provitera said because I represent just Mr. Alonzo as to this incident. But as to what he said about Mr. Alonzo, we have a way to check it.

And he said, "Yes." He did answer the question, "To whom did you deliver it in the Bronx?"

Then he was further asked a question, "And

Bronx, is that right?"

And in court here he said, "Yes.

you named three people to whom you delivered it in the

Then he was asked the further question,

"Did you name Butch Ware as one of those people to whom
you delivered narcotics in the Bronx testifying under
oath before that grand jury?"

And he stated, "No, I didn't."

Then he was asked, "Did you name William Alonzo?"

And he stated, "No, I did not."

Now, you recall when he was testifying the copy of the grand jury was right here. So he couldn't lie directly to the jury here, directly to you. He had to say here in court exactly what he said to that grand jury then.

But now we have a way to cross check what this -- what Provitera said. He gets up in court and tells one thing here and Alonzo is in this story. He testifies under oath to the grand jury a couple of months ago and Alonzo is not in the story.

You may recall that I asked him, "When you took the oath before the grand jury was it the same oath, was the oath not only to tell the truth, but the whole truth?"

And he said, "Yes."

Now, you know, when you take an oath like

that you don't get up and swear, "I swear to tell the truth and the selected portions of the truth that I would like to relate to you, ladies and gentlemen."

That isn't the oath. The oath is to tell the whole truth here. He got up and he answered the question under oath in the Bronx. He names people. No William Alonzo.

Well, I submit to you, ladies and gentlemen, this is the kind of discrepancy that amounts, honestly, to nothing else but lying here.

And so in determining the credibility of

Provitera I would ask yourgust to consider whaten have just said, and of course, walso, without belaboring ather with point, all of the things such as have been addressed to you already, the motive to lie this man might have because of the years he is facing in jail, the fact that he was facing this jail time and he made a deal with the government.

You know, when I say the word deal with the government, you know, he was asked a question, "Did you make a deal with the government?" you know, he was asked that question, and he said, "Yes." He didn't say, "Well, we sat down and we made a gentlemanly agreement, we came to terms as businessmen would," or something like

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that. He made a doal home and the last

that. He made a deal here, and the deal was that he was hoping he could save himself.

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Now, I ask you to consider the fact of his prior inconsistent statement, his motive to lie, if any, without belaboring that point, the fact that in his story about Alonzo there is no specificity at all as to date, as to month, and moreover, that there is no proof beyond anything except this man's word. There is no proof.

And you may recall that I asked him that precise question. I don't want to take up an undue amount of time by referring to the record here, but on the other hand, I don't want the jury to feel that this is a lawyer getting up and in a facile way kind of, oh, generalizing on what was said and coloring it a little: "I want you to understand that what I am referring to is what the witness said here.

He was asked the question:

"Q And as to that meeting in the Bronx, incidentally, you don't have any notes or pictures or any tapes or anything to prove your allegation that Mr. Alonzo was in that bedroom with you, do you?

"A No.

"Q It's just your word here, is that right?

"A Yes."

That is all it is. It's his word, the word of a man who tells one story to this jury, the trial jury,

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and who tells another story to the grand jury.

Now, as to Mr. Alonzo, as to the proof the government has presented as to him, the word of Mr. Provitera, I ask you to bear in mind the standard of proof beyond a reasonable doubt. It's up to the jury, that is the jury's function, to decide if this proof has been met. That's half of the case against Mr. Alonzo.

I submit to you -- the jury decides -- but I submit to you that that adds up to close to zero, if not zero itself. Put that is only half the case against Mr. Alonzo that the government is presenting. The other half of the case -- and now let's get to the other half of the evidence -- the government's case against Alonzo as presented through Provitera is buttressed by the word of Harry Pannirello. That is the other half of the case against him. What does that add up to?

The government may say, "Well, you may not believe all that Provitera said. I don't know how I can explain that discrepancy in the grand jury testimony."

You know, incidentally, about that grand jury testimony, so frequently the argument is made where a witness testifies before the grand jury that, well, he wasn't asked that question. A lot of lawyers get up and say, "You didn't say that before the grand jury."

question before the grand jury, and, of course, witnesses before the grand jury, they only answer questions that they are asked." But we have, regarding Provitera, we have the fact that he was asked the question.

So please, when Mr. Phillips or whatever agent

make the rebuttal argument, "Well, he wasn't asked that

Of course, the government, perhaps properly, may

of the government makes their summation, please try and bear that fact in mind. Just see if there is any way he can explain this inconsistency or, as I might submit, lying under oath.

But the government will say to you, "Well, that may not be enough. Maybe Provitera's case against Alonzo doesn't add up to proof beyond a reasonable doubt. But let's show the other half of the case against him, and it's the word of Harry Pannirello."

So the government digs down and pulls out Harry Pannirello, and that is the other half of the case against Alonzo. Of course, Pannirello's story was that he claims that some time during February or March, '72, after the supposed meeting Provitera states, that he had a conversation with Alonzo and no one else was present.

Now, interestingly enough, Harry, who supposedly was present at this meeting which Provitera referred to,

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Harry just never happens to refer to that.

I don't know. Was Harry there? I mean, did that meeting take place?

Well, Harry just tells about one meeting with Alonzo and his story is that he had a conversation with Alonzo and, conveniently enough, no one else is present, and a small transaction, he claims, was completed.

Of course, you recall that he was asked then, "Could you identify Mr. Alonzo," and you recall that initially he couldn't identify him either. He was asked the question, "Do you see Mr. Alonzo here in court?" and his answer was -- it's on the record -- "No." a on the record --

No, again, the jury has to make a credibility determination regarding Pannirello, and, you know, the Judge is going to instruct you as to determining credibility.

You know, we are all human beings. I don't think there is any human being in the world who tells the truth all the time and there probably is no human being who lies all the time, although in the course of this trial I don't know about that. But the Judge will tell you that you are entitled to accept part of a witness's testimony and reject part of it. You are not obligated to buy, to swallow somebody's whole story or reject it all. You can do what you want with it. You can sever part of that

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story.

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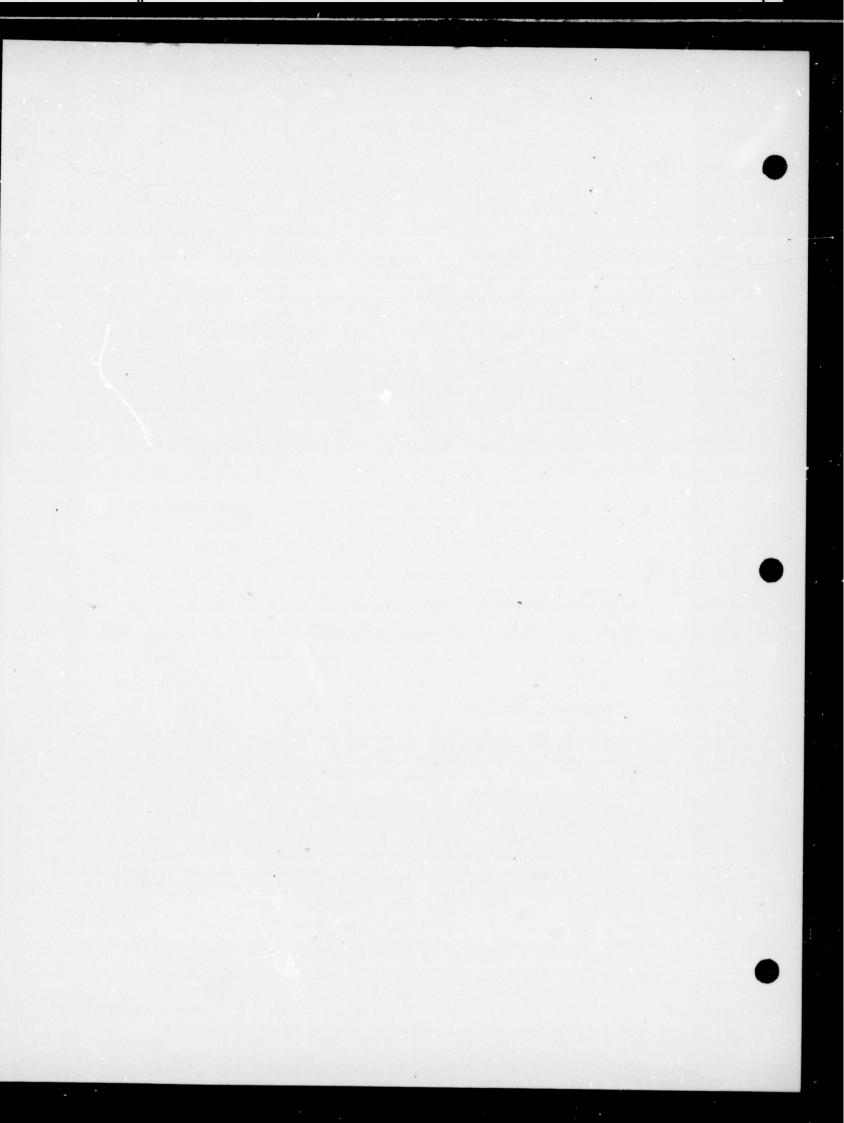
Now, as to the case against William Alonzo, let's look at the credibility of Harry Pannirello as to that story. Let's see first if the story is inherently coherent.

Well, the first thing is, as I said, Harry strangely enough doesn't support what Provitera said. Harry is supposed to have been at that meeting and yet Harry doesn't say a word about it. Of course, Harry, as it turns out, unfortunately enough, he just didn't happen to make any handwritten notes himself to buttress this fact.

Maybe it would make it a strong case, but he just doesn't happen to have that. And of course Harry, he is not quite certain of the month either.

I don't know what this does in terms of people who are looking at things from the rigorous standard of proof beyond a reasonable doubt, when a witness gets up, a man is charged with a crime, he is supposed to come into court and defend himself, and a witness is telling about some meeting that the man is supposed to defend himself and the witness is not even quite sure of the month. Not even the day or the hour, but the month. Well, Harry is not quite sure of the month that he saw William Alonzo according to Harry's story.

But there is one thing he is sure about.



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Harry testified with a hundred per cent certainty that he made a deal with Pat Dilacio and Dilacio wasgoing to be the pick-up man for the narcotics and Harry was going to be the delivery man to the customers. That was his testimony. There is no ambiguity about that.

Well, let's see if that, you know, sticks
together. Of course, Harry's testimony is later on that
when one of the parties was going to go in jail and Harry
said he was going to take over the business and get some
phone numbers and one of the lists of phone numbers he was
going to get was going to be the list of phone numbers of
the customers. Now, here is Harry, the customers delivery
man in this deal with Pat Dilacio, he is going to get the
list of the customers' names and phone numbers. So he got
the list. There were a number of names on that list,
too. It wasn't just two or three. It was perhaps six or
seven names, whatever. It's the jury's recollection that
counts here.

But he was asked the question, "Did you get William Alonzo's name, did you get Butch Ware's name, did you get Butch Ware's name, did you get Butch Ware's phone number?" He didn't get it.

Now, here we are supposed to bolieve that Harry is the man that is making deliveries and Butch is one of his customers and yet strangely enough he never gets the

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phone number of one of his customers here.

Now, I don't know. The government may argue,
"Well, let's see. There was testimony here by even
Hattie Ware's own witness that Butch, her brother, was
living with her for a while."

But was there any testimony that Harry got the

message regarding this customers' list? Well, you don't

need a separate phone number for Butch because he is at

Hattie's. There is no testimony as to that. I mean, if

the government proffers that as a way to get around this lack

of evidence I ask you to apply the critical standard and

bear in mind the standard of proof beyond a reasonable reasonable doubt.

Of course, you recall there were a whole bunch of pictures shown here, pictures relating to other people here, and Harry was asked the question, "Do you see William Alonzo or Butch Ware in a single one of these pictures?"

Not a one. There is another area where there is no proof against Mr. Alonzo.

And, of course, the government claims that Mr.

Alonzo received some heroin from Harry Pannirello. Is that
heroin here in court? It isn't.

You know, right sitting over there, ladies and gentlemen, in these plastic bags, there is no doubt there

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is some heroin in this case, but who had that heroin.

The government witnesses here. Is there any heroin that
William Alonzo is supposed to have touched in this case?

Nothing.

Well, again I say we can't get inside the head of Pannirello. There is no way for us to take his head apart and see is he telling the truth about Alonzo in this case. And so the only thing we might do is let's see, did the guy say anything before. Maybe we can cross-check that way. Did Pannirello say anything before about these incidents, maybe there is some prior written record, there is something that we can grasp on to so we can believe this, human being, Pannirello.

Well, fortunately there is such a record, so maybe now we can tell if Pannirello is telling the truth or not.

Pannirello, you recall he made an agreement to cooperate, and part of that agreement to cooperate was that he stated he was going to tell the truth to the government agents from then on. And so Agent Nolan typed up some notes, and Pannirello, you recall he testified, the notes, he said he checked them and they were correct.

Again, I just don't want the jury to feel that this is Mr. Alonzo's lawyer telling you that, I don't want you to feel that this is Mr. Alonzo's lawyer telling you

that Harry said that. It's been a long trial and I don't think any human being could remember every bit of the evidence. But I just want it crystal clear that Harry said he read these notes and he checked them and they are correct.

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through them and ask you if those are the notes you were talking about?"

Harry says yes.

Then he says, "And you looked through it and they were correct, is that correct? You didn't find no fault with it, they were right as far as you were concerned, is that right?"

You may recall he was asked a question:

I show you these notes and ask you to glance

Harry said there were some faults in it, I believe.

So the question was put, "You believe? And did you tell that to Mr. Nolan, that there were some faults in there?"

He said yes. Then he said, "What did you tell Mr. Nolan about the faults?"

He said -- here is Harry -- in reference to an automobile --

He said yes. "What else?"

He said yes, "I think a couple of names.

"0 What names?"

> Then he said, "Pat Dilacio's name, I believe." Then he was asked, "Anything else?"

He said, "Ithink that's about it."

Then the question was, "As far as you were concerned, everything else in there, after having read it, is true, correct?"

Then he answered in transcript here, "Yeah."

So now Harry talls the story to Nolan, Nolan types it up, Harry looks at it and it is correct. Okay? So now we can check to see if this story that he tells about Alonzo that he doesn't know, not quite sure of the month, but he is sure it is in February or March of '72, is the story correct.

And, of course, what happens? During the course of that transcript he referred to a couple of things and I want to read from the record here just so it is crystal clear that these are not my words but Harry Pannirello's words.

The question was put to him, "Now, Mr. Pannirello, during the course of these interviews in the course of your testimony, I believe you used the phrase there came a time when there was a dry period, is that correct?"

He said yes.

Then I said to him, "And can you tell me what the phrase dry period means as you used it?"

Now here is Harry's words. I didn't say, "Harry, is this what a dry period means," and put the words

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These are Harry's words. in his mouth.

He said, "Well, there wasn't any more goods to ba had."

Then I said, "When you say goods, you mean heroin, the heroin you were dealing in, is that correct?" He said yes.

Then I said, "And so that during the dry period, is it a fair statement to say that you were not getting any more heroin to sell? Is that correct? And is it a further fair statement to say, therefore, during the dry period you didn't have any heroin to sell? Is that also correct?"

> And he said yes. And he said ves.

You know, Harry didn't interrupt me and say, "Now, wait a minute, dry period doesn't mean I'm entirely out of goods, I might have two ounces or something like that. "Harry said he didn't have anything to sell. So Harry did refer, during the course of these prior written notes, to a dry period.

Then, of course, the question becomes, when is the dry period?

And here is the chance the jury has, you, the jury, have to cross-check what Pannirello said under oath to you about Alonzo and see if it cross-checks with something that he said before to a government agent when he

swore that everything he said to a government agent thereafter would be the truth.

I said, "And you are also stating, and correct me if I am wrong" -- I told Pannirello, "Correct me if I am wrong, interrupt me, stop me" -- I said, "You are also stating that you admitted last summer, seven months after having promised to tell the truth to government agents and agreeing to cooperate, you are also stating that you told them then there was a dry period from February to June of '72?"

And his answer was, "Yes."

He didn't correct me if I am wrong, he didn't interrupt and say, "Wait's minute." His answer was yes, "that's what he said to the government agent.

Now, what do you do with this, ladies and gentlemen? You are the finders of fact. You are the people who decide the credibility of Pannirello as to William Alonzo here.

He gets up and under oath and tells one story about Alonzo and yet he tells another story to the government agents seven months ago that excludes altogether the possibility that the story he told in court here is the truth. I mean, as to Alonzo himself, what are we to believe?

It is for sure you can believe that Pannirello was dealing in heroin, because Logan caught him red-handed. There is no doubt about that. But what kind of sure proof, what kind of proof beyond a reasonable doubt do we have that Alonzo had anything to do with this at all? We got the word of Pannirello, which is contradicted by his own previous statements when he had sworn to tell the truth here.

So I ask you to look at the men who have testified against Alonzo and look at the source of this evidence.

You have Pannirello, the guy who said he would do anything for money, Pannirello, the guy who said in the course of his dealings that he was going to do something. Logan understood that to mean to use violence and Pannirello corroborated it.

You got a guy, in other words, who is -- what is "do something"? What is "use of violence"? Pannirello said he would do it. Does that mean he would hire a guy to break somebody's leg, to twist their arm, to shoot them? What kind of human being is that? Is that a creditable human being that you are being asked to believe as to some flimsy story about Alonzo here?

He is caught redhanded and there is no doubt that he is pushing heroin. And I ask you to contrast the case.

You know, when Pannirello was caught, contrast the case they had against Harry against the case against Mr. Alonzo.

You know, Harry was caught, Logan had the heroin, he was right there, he had seen him many times. You got the word of a respected, trusted individual. You got Agent Logan, who got in here and testified.

You know, there wasn't a single word of Logan's that was disputed. There was no prior memos of Logan, no prior testimony under oath to discount anything Logan said. Pannirello was caught redhanded and he knew it. Contrast that with the case against Mr. Alonzo.

You know, the standard of proof as to each human being is the same. If Pannirello went to trial, he would have a right to be proven guilty beyond a reasonable doubt, except he knew it. The same standard of proof applies to Mr. Alonzo here.

So I ask you to think about how credible the sum of this evidence against Mr. Alonzo is.

You know, in considering whether to just give any credibility at all to Pannirello on this point, just think, you know, of the situation where this human being was at one point. He was arrested and he was caught red-handed and he knew it and he was facing 60 years in jail there. Now, he is a 31-year-old man and even if he didn't

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get 60, maybe he might get 15 or something like that, well, you know, that is the heart of a life out of a person who is 31 years old. I mean, there is no way any human being can ever recapture 15 years, the 15 years if you start when you are 31. It just can't be done.

So for Harry Pannirello, it probably, when he looked at this situation and when he was sitting in jail there for a couple of days, it probably looked pretty bleak.

You know, Harry couldn't get up in his bragging way and he couldn't do something, he couldn't do something about this. He was caught redhanded. He couldn't employ some violence and go out and hire a thug to beat up Agent Logan or kill the U.S. Attorney or something, he couldn't do that in this case. He was caught for good. It probably looked pretty bleak to Harry. And I think he probably, in those days in jail, felt his luck ran out.

But resourceful as some human beings are, sometimes some human beings will stop at nothing to achieve their motives in life. As resourceful as Harry showed himself to be, he weaseledout of this thing. He made a deal with the government. Instead of now being a red-handed-caught heroin dealer who was facing jail, a person who would stop at nothing to make money and use violence to enforce it -- I mean, I don't, really -- what more

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could you say about Harry? He was going to weasel his way out of it and he did.

To me and I submit to you, ladies and gentlemen, in some ways it is unbelievable that Harry, from his low position, could somehow weasel out of this and now he is the cooperating individual.

that, of course, Harry told Logan that he had a lot of money. He said he could make a half a million dollars in a year of dealing and he would stash three hundred thousand. I don't know, maybe he was bragging. But let's put it down by even — cut it down to one-tenth of what it is. Suppose Harry just had 30,000, not 300,000, stored away. Just think of this for a second. He is in jail. He gets out and makes a deal. Let's suppose he even has a little stash. Do you think, honestly, that he would come in and tell the U.S. Attorney, "Well, I'm cooperating now and I want to come clean and one of the things I want to tell you, Mr. Phillips, or whoever it is, you know, I just happen to have this little stash, it was dirty money, and I'm going to turn that over."

I asked Harry that question or some defense attorney did, and he said of course he would.

I ask you, is that believable? Is that honestly

Delievable knowing what you know about Harry Pannirello?

I submit that it is just beyond belief to think that Harry would say that. He is the man who said he would do anything to make money.

And so I say to you facing all that jail time and caught redhanded, short of someone holding a gun to the head of a loved one, I honestly just standing here, I can't think of a greater motive for a human being to lie.

So Harry Pannirello made a deal, but the deal was that he was going to have to testify. And Harry Pannirello, the weasel, to weasel out of this deal, he wasn't dumb. He knew that he would have to name some people.

Now, suffice it to say if Harry got up and told

Phillips, "Well, I hadn't been dealing too much, and,

frankly, this is just about the only deal I had with Agent

Logan," I just submit to you, ladies and gentlemen, that

would not have been accepted by the government. Harry knew

he had to name some people here. There is no question about

that. He knew he had to produce. He made a deal and he

had to come up with his end of the bargain and Harry was

not a man to fail in this bargain to pull him out of jail,

so he knew he had to name people.

I submit that what happened -- and, you know,

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Harry made this deal when he was out on bail, but he was still under the gun of facing this jail time. He wasn't picked up like Stasi was. I mean, you heard and you are going to hear more, I think, in summation regarding the pressure Stasi was under. Well, Harry wasn't exactly in jail then, but he was just a step away from the door of jail and facing big jail time. So the motivation for Harry to lie was exactly the same as the pressure that was on Stasi.

And Harry knew he had to name some people. And I don't think there is any doubt about the fact that as far as this deal, he felt the more he named the better for him. -I don't think there is any doubt about that, ladies and gentlemen.

And so what happens? Well, I think one of Harry's thoughts that passed through his head was, "Have we got somebody we can throw in here? Do we have an expendable person that doesn't have any ties here? I don't care."

I think he would think of an expendable person the same way as he would do something about, you know, use a little rough stuff to collect money. He didn't care about any human concerns then and I don't think he cared about. human concerns if he knew he could throw somebody into

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jail if necessary if he could find an expendable human being to bring into this case to help him get out.

And so what happened, all of a sudden he is faking back and he comes up and here's Butch. And I think Harry thought to himself, "We can throw in -- let's throw in this guy. I mean, after all, you know, we are not talking about something where I have to come in and prove anything happened, we are not talking about something that happened even recently, we got this guy Butch here. I don't know Butch. But we are talking about incidents -- "Harry was picked up in January of '73. We are talking about incidents back at least 10 months beforehand when he testified about William Alonzo.

So I think in Harry's mind he could readily feel,
"Well, what is this gry going to come up with? I am just
going to get up and say something about this guy, it is 10
months beforehand. This guy isn't -- I'll be a little vague
about it, too, I won't quite know the month or the exact day,
I'll be a little vague even as to the month, and I'll just
say these words about this guy and this will pull me out of
this this way."

I submit to you, ladies and gentlemen, that is exactly what happened here.

We don't have any proof except the word of

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Harry Pannirello and, of course, Jimmy, who Harry brought into this deal.

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There is no pictures here, there is no notes, there is no memos, there is no tapes, there is nothing.

You know, I would submit to you one of the standards that the jury -- it is always said that the jury should come in, the jury shouldn't know anything about the witnesses, but don't close your common sense outside the courtroom when you deliberate, bring your common sense right into the jury room when you deliberate.

And I say to you, ladies and gentlemen, isn't it frankly a matter of common sense that you would require something of the governmenternian aftempt to prove a man'r guilty beyond a reasonable doubt, something beyond the word of these two human beings? And yet there is nothing here in this case, just nothing as to Alonzo.

There is no pictures, there is no nothing.

But more than that, more than just a lack of any corroboration, we say we have negative corroboration. It isn't as if the prior notes verify what these guys say, we have prior sworn testimony of Provitera which contradicts what he said and prior written notes which Pannirello says he swore he was going to tell the truth to the agent that contradict what he says.

I submit to you as a matter of common sense

that the high standard of proof beyond a reasonable doubt as to these two men is missing.

You know, I guess -- I mean, just look at it this way. If the case against Alonzo, if it had been -- let's say Harry had claimed that he brought Agent Logan and there was Agent Logan and Agent Logan went up to University Avenue and he saw Mr. Alonzo, that would be a case. That would be a case beyond a reasonable doubt. But there is nothing here.

You know, I ask you to bear in mind, there is going to come a point when Mr. Phillips, I believe, is probably going to sum upperfor the government, herisan the going to get up and talk to you? Governow, of course you? know we have to bear in mind as to these cases each party has a right to address you as to the merits of the case and Mr. Phillips is going to get up and say what -- he is going to offer you an interpretation of the facts against Alonzo.

But bear in mind this. Mr. Phillips, or any agent of the government here, they don't have a single shred of evidence that they have, except the word of Pannirello and Provitera. There is nothing that they have shown you to bring in that they know that what Pannirello and Provitera are saying is true about Alonzo

except the word of these men. There is no external evidence.

I submit to you the motivation to lie to get out of jail time, those jail sentences, those potential jail sentences are hanging like a guillotine over the head of Provitera and Pannirello, and there is no specificity here. I submit to you, ladies and gentlemen, that if you are thinking of a standard of proof beyond reasonable doubt you are entitled to get that. You are entitled to ask that of the government and you haven't gotten it as to William Alonzo.

You is an unsurmountable factor that I just don't know that what the government is going to say about is the fact of these inconsistent prior stories, not on the part of just one but on the part of both men here.

So I just they to you during the course -this is the last chance I am going to have to talk to
you and during the course of the government's summation
I just ask you to remember the fact, you know--I remember
the feeling in the courtroom after the opening statements.
Mr. Phillips got up and made an opening statement and
he is a powerful speaker, a fine speaker. I think
there was a feeling in the courtroom that we are dealing

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with a significant trial here and there is no question we are.

But on the other hand, I just ask you to remember this, that Mr. Phillips or any agent of the government, he's mouthing things that come from the mouth, from the source of Harry Pannirello and Jimmy Provitera. He is not telling you that "We got something that is firm here from Agent Logan," as to Alonzo, he is telling you -- he is recounting evidence that came from the word of Pannirello and Provitera. And so honestly, ladies and gentlemen, so as not -- so that none of us are dissuaded from really considering what is true here, when Mr. Phillips is up, here talking about Mr. Alonzo, I ask you in our mind, frankly, to be fair, to substitute in the verbal picture in your mind, substitute as if Pannirello was standing up here instead of Phillips and then see if it weighs to the high standard of proof beyond a reasonable doubt.

It is all very good. I think there is no question in this case that heroin pushers should be put in jail. Mr. Alonzo is put disputing that point at all. In fact, he agrees with it.

People like Pannirello and Provitera, who take these narcotics and go around and sell them, there

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more valuable, a man's liberty, is at stake, the standard is a high one. It is proof beyond a reasonable doubt. And anything less, frankly we are just invading the liberty of all of us here.

I would say to you and I ask you as the jury here, that bearing in mind the standard of a reasonable doubt means something that would cause you to hesitate in a matter of importance in your personal life, I just ask you to apply that in the case against Alonzo.

You know, if somebody came up to each one of you individually and came into your House and said, "Now, listen, let's talk about, "sand, then, you know, talking about some subject, like and I don't know what now what he important to any individual one of you -- you know, buying a house, buying a car, a child of yours getting married, I don't know what, you know, might be important, but in some matter of importance in your personal life and someone came up to you and said, "And here are the people that want to be part of your life and affect your decision," and then I introduced Harry Pannirello and you knew about Harry and you knew he had this case hanging over his head and he had a motive to lie and you knew he had told prior inconsistent stories,

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and then Harry got there and Harry said whatever is the thing in your life that is important, Harry gave you this deal, can any one of you say to me honestly that you wouldn't hesitate?

Well, that is the standard in this case.

That is the testimony. A man under our system of law cannot be deprived of his liberty if that test isn't passed. And I say to you that in this case as to William Alonzo -- and again I am not talking about any other part of this case, I am talking about the separate trial of Mr. Alonzo -- I say the government did not meet the test here. The government didenot prove William of draw Alonzo guilty beyond a reasonable doubt.

Finally, ladies and gentlemen, I just want to say during the course of the trial like this it frequently happens whether a man testifies or not that the jury often gets this, you know, to hear much more and to get a feeling sometimes much more of the lawyer rather than the client.

I have an opportunity to get up and give a summation here and you are kind of a captive audience and you have to listen or look at me, you know, for however long it has taken, and it frequently happens, and I guess it is just a matter of human nature, that the

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jury might actually have greater exposure to the lawyer than the client. All I want to say is regardless of any feelings or impressions, negative or positive, whatever feelings you might have about me in this case, that is really all irrelevant, because the only thing frankly that is important here is that William Alonzo in this case is not guilty.

Thank you.

THE COURT: All right, Mr. Marshal, you can take the jury out.

(The jury left the courtroom.)

THE COURT: Mr. Rosenbaum, you are next.

MR. WARNER: Your Honor, I am back.

MR. ROSENBAUM: Mr. Warner is next, your

Honor. There has been a bit of shuffling.

THE COURT: Reshuffling?

MR. ROSENBAUM: Yes.

THE COURT: I am glad I asked before, because it would be embarrassing to both of you.

MR. ROSENBERG: Are we only going to have two summations?

THE COURT: Yes, that is my guess. I can't see how we could have any more.

Mr. Warner, how long do you expect to be?

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hour.

MR. WARNER: I know you have heard this before, Judge, but I really will try to be short.

would like to be, if I can, and I hope maybe a half

THE COURT: Good.

(In the robing room.)

MR. PHILLIPS: Mr. Warner was playing around with some tapes a few minutes ago I noticed, your Honor, and I asked him if he intended to play them in front of the jury. He said yes, he did.

I asked him if they were in evidence and he said they were not.

Warner not play any tapes that are not in evidence.

MR. WARNER: My response is this, your Honor. If I picked up the transcript and I turned to page 797, for example, I would find in there a prior inconsistent statement of Frank Stasi's that I confronted him with.

If I said to the jury, "Now, you remember I confronted him with his prior statement and I turned to the page in the thing and I said to him, 'Mr. Stasi, were you asked this question and did you give this answer,' here is what he said," I could do that.

... There is no difference, I submit.

THE COURT: I suggest you do it just that way, instead of getting involved in something that is not in evidence.

MR. WARNER: No, but, Judge, those tapes -were made in the same way -- the tapes were played in the same way that the testimony was read from the transcript.

THE COURT: I don't understand what you are talking about. Back up and go very slowly for me.

MR. WARNER: I understand. Yes.

Your Honor, what I am talking about specifically is in those portions of my cross examination where I read from the transcript to confront him with his prior inconsistent statements, I am not going to play any tapes of that suddenly. But at that portion of my cross examination where your Honor --

THE COURT: I will let you play a tape.

MR. WARNER: Right. I simply want to recreate this like reading from the transcript.

THE COURT: The trial tape.

MR. WARNER: Yes.

MR. PHILLIPS: There is only one portion

I have been advised by an individual of questionable

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reliability that Paulie the Arrow, also known as Paulie Gregario, testified before the grand jury and during the course of this grand jury he was asked questions such as, "Do you know John Springer or do you know a Hank?"

And his response was, "No." And also there were questions asked and answered, as it was told to me, that this person Paulie had never dealt with Hank.

I have asked the government for a representation if my information is correct or if it is inaccurate.

I have no --

MR. PHILLIPS: That is easy enough.

The information is not correct, your Honor, not contract, your ...

application on behalf of Mr. Rosenberg for his client,
Mr. Pugliese, whether Paulie the Arror or Paulie Gregario
ever testified.

THE COURT: I gather your source of information is highly questionable.

- MR. SIEGEL: Yes.

THE COURT: I think the government would have turned it over if it was not.

MR. SIEGEL: All right. I just wanted to put it on the record.

THE COURT: All right.

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(In open court; jury present.)

THE COURT: All right, Mr. Warner.

know, if I was standing here in front of average jury after almost eight weeks of trial, thousands and thousands of pages of testimony, you have been sequestered for the entire period, we have been in court every day except Sunday, most of the time we have been here on Saturday and legal holidays, where eight summations preceded mine, and it is 20 to 4 in the afternoon, if I-was standing before the average jury I would be a little worried. I would the eworried abecause where our think that every one was to ntired that they eare sjust parent too tired to really listen to me.

But I think it is no secret in this courtroom that in fact you are all a very exceptional
group of people and a very extraordinary jury. I think
it was obvious at the very beginning when there was a
request to take notes, showing the attitude that you
were taking toward the trial. And, of course, as the
trial progressed and you were all watching the witnesses
intently it was obvious if anyone would get in the way
or in the line of vision that person was asked to move,
so that the witness could be seen and examined and

studied.

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And so I feel confident that I can count on

you to listen to what I have to say at this last oppor-

tunity, and, of course, that imposes an obligation on me.

If I can count on you then you should be able to count

on me. You should be able to count on me to get to

the nittygritty, as they say, to get to the essentials,

to talk to you about the facts, not to be long-winded,

and simply to tell you why I think the evidence in this

case reveals the innocence of my client, and then sit

down, and that is what I am going to do.

Now, the nittygritty of this case for my acty of the client, Joe Ceriale, is Frank Stasi. Let In fact, lithis cast not just the nittygritty; it is the whole case. There was never any mention of my client by any other witness for the government than Frank Stasi.

There was a lot of talk about mannite in the case, right from Primrose Cadman. She mentioned that she took heroin mixed with mannite. But only Frank Stasi mentioned my client. And that itself I think is something to think about.

Now, I believe that I can show you by discussing the testimony of Frank Stasi that he was lying when he accused my client, Joseph Ceriale, of being

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involved in this. Now, I am not going to be able to show you, and I know you know this, I am not going to be able to show you an admission by Stasi that he was lying, that he said, "I confess, counselor, I was lying That did not happen. there." But that doesn't ... That never happens in real life. When you happen. are in law school sometimes you fantasize about how you are going to become a lawyer, a trial lawyer, and you will confront the witness and he will reveal that he was lying all the time. In Perry Mason, of course, it happens with regularity at the end of the show. But in a trial, in a real trial, it doesn't happen.

he gets pushed, then he hides behind something. He might hide behind a statement that he doesn't recall or he is confused. And if he is pushed even more then he covers another lie to cover up the first lie. But he does not admit it.

And so it is necessary for you in your job as jurors, and it is a tremendous responsibility, to get beyond the words of the testimony and to look to its reasonableness and its trustworthiness.

Of course, one of the things that you consider with that is the motivation of the witness.

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But that is something that I think you know about Frank
Stasi and I don't want to dwell on. I would mention
to you, by the way, that when Judge Duffy gives you
the charge he is going to tell you that Frank Stasi is
an inherently suspect witness, that his testimony
has to be looked at with particular care, because he
may be somebody who has an interest in the outcome of
this case. And, of course, you know Frank Stasi
himself said that he is here to help himself, and you
heard about the airplane ticket and the pot of gold
and the two undercover sales that he is trying to work
himself out of. That is one thingoyou considers the thin
motivation of the witness: That one the witness we have a

But I would like to direct your attention to his testimony, to specifically what he said, because I suggest to you that Frank Stasi's testimony -- oh, it is consistent with his having been involved with mannite. After all, the police came, they looked at his trunk, they found mannite in it. There is no dispute about the fact Frank Stasi was involved with mannite. But I suggest to you that his testimony is most consistent with his having purchased that mannite from a man that he had known a couple of years, who had red hair, and whose nic name was Joe Red, and who, most

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importantly of all, was not Joe Ceriale, because Joseph Ceriale doesn't match that description.

Frank Satsi has known Joseph Ceriale, seen him in the neighborhood for 10 years, and Joseph Ceriale is not known by the name Joe Red and he has never been known by the name Joe Red, and he certainly does not have red hair, and he never did.

Instead Joseph Ceriale was substituted for the real person later, when that person couldn't be found, and I am going to explain to you how that happened.

with the means to figure this table outs to Well reit is table out.

wasn't just Prank Stasi alond: instit was affered of the congress called the Jencks Act. The Jencks Act

says that defense attorneys have to be provided with all the previous statements that a witness made, and we got those statements, and on those statements, those tapes, there is a description of Frank Stasi's source for mannite, and Frank Stasi in his testimony had to account for that.

Now, you have heard the word coverup lots of times during this trial. Well, I suggest to you that Frank Stasi's testimony was a coverup of his previous description, of his revious pointing out of the

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"Voice: A couple of years."

So Frank Stasi had already said, "I know him a couple of years," and I confronted him with that. said, "Well, what about that?"

Well, he had an answer. He wasn't going to say, "Oh, yes, you are right, I have been revealed, I was lying." He says, "I'm confused." He said, "I know him longer than that. I was confused at the time probably."

I asked him the natural question, "What were you confused about?"

"I don't know. "sver: ___ acm = mov. Answer: Well, naturally, because there is nothing to be confused about.

I am not talking now about the difference between "Oh, you said you knew him for two years and in fact you knew him for three" or "10 years and you knew him for 11 years." I am not talking about that distinction. I am talking about a big difference, the difference between "I sort of know him casually" and "Oh, yes, I know him." That is the difference between two years and ten years.

When Stasi was talking to the police it was a couple of years and you can't be confused, ladies and gentlemen, about that big a distinction. It is too

basic.

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And so I suggest to you that that statement
by Frank Stasi, "I was confused," was one of those coverups that I was talking to you about before when I said
people don't just admit that they are caught in a lie, and
I suggest to you that when Frank Stasi was talking to the
police he was telling the truth, he did only know his mannite source for a couple of years, and that now he had to
change that and cover it up in order to that he could
apply it to Joe Ceriale.

Okay. What is the next one? The nickname, Joe Red. Now, Frank Stasi gave the police the conname Joe Fed. He said, "That's who I bought the mannite from, a guy named Joe Red."

But he also gave it to you. He didn't change it. He gave it to you when he testified on direct examination. Page 308 in the transcript. He mentioned the name Joe Red and then Mr. Phillips said to him, "Well, this particular person, Joe Red, do you see him in the courtroom?"

And he said, "Yes," and then he went over and pointed out Joe Ceriale.

Now, of course, Joe Ceriale is not known as Joe Red and never was known as Joe Red. Frank Stasi

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knew that, because Frank Stasi, he was in the neighborhood, he was aware of the fact that Joe Ceriale is not known as Joe Red. Of course, he was stuck with that name, he had mentioned that name, and so he kept on with that name.

But then on cross examination, when I started to press him about that nickname, and I said to him, "Well, Mr. Stasi, for how long a period of time has Joe Ped been known as Joe Red?" then he started to see the handwriting on the wall:

"Oh, there is going to start to be an inquiry now, into this nickname, when adid this nickname, get an add this started, who else did you hear call him this name, "aso can on and so forth, all of these things which can come down on 6ou like a ton of bricks. When he realized that he starts to change and then he comes up with, "I made it up. He is not called Joe Red. I made up the nickname."

Then later on in my examination of him I asked him again, I said, "Mr. Stasi, your testimony before was that you made up the nickname Joe Red?"

Answer: "Yes."

That is on page 782.

Answer: "Yes, I made it up."

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Well, I suggest, ladies and gentlemen, that

Frank Stasi's whole examination in this case contradicts
that statement, Frank Stasi's own words contradict his
claim that he made up that nickname. If you will
bear with me just a little bit, I would like to read you
small excerpts from here and there, about two or three,
to show you just what I mean.

For example, on page 332 of the transcript he says, "So what did you do?" He is talking about mannite and so on. "So what did you do?" Mr. Phillips said to him.

"I went to East Harlem, where Joe Red stays, on, and I said I wanted some mannite. "I vanued some mannite." I vanued some mannite. Then Mr. Phillips responded to that, "Where do you see Joe Red?"

He said, "Well, I see him in the barbershop."

Then on page 341 in the transcript he says,

"What didyou do?" Mr. Phillips said to him.

And he answers, "I went downtown to get some mannite off Joe Red."

Again he uses his name.

Of course, the best one of all, the best one of them all, I saved that one for cross examination, when I got up and I said to him, "Mr. Stasi, my name is Ker

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And then at another point he says, "Well, Gigi

Gigi to see Joe Red, and he said, referring to that conver-

sation, he said, "Well, there is a fellow by the name Joe

Ped down there," referring to the barbershop.

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told me, he says, "Go down to see Joe Red and get some mannite."

Is that the way you talk about a name if you are making it up, tell about how somebody else used the name too?

I mentioned that to him on cross examination. I said, "You know, Mr. Stasi, you are claiming you made up this name. Isn't it a fact that you told the police that you had been given instructions to go down and see Joe Red?"

"Oh, no. I said I was told, 'Go down and see Joe.'"

Now he changes his testimony just from a few days before because now there is a new position. Now he realizes he has to cover up the nickname too. That is on page 765 of the transcript and again on page 796. I won't read it now, but taht is what it says. He changed his story. Suddenly now he is taking out words from other people's mouths because they contradict what he is saying.

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And there were other uses of the word. But you know, when you get the indictment, and you will be given the indictment in this case to take back with you, you look through the indictment, see how many times you see Joe Red. It's even in the indictment. Is that how somebody acts when they made up the name, they go telling the grand jury the name too, it gets into the indictment?

No. I think the only reasonable interpretation of Frank Stasi's response to this name is that he is trying to take the second bit of descriptive information, the nickname, and he is trying to say, "Oh,no, no, I was really talking about Joe Ceriale, because this nickname, I made it up." But it's just not believable. It's not believable from the way he used it and it's not believable from the way he changed and started taking out what before he had put in.

Now, he said, of course, "I knew him by Joa," and it's not too important, ladies and gentlemen, whether Frank Stasi knew Joe Red by the name Joe and heard Joe Red used by others or whether he used the name Joe Red himself. There is something much more important, and that is the last of the three descriptions, and it's the most overwhelming declaration of Joseph Ceriale's innocence in this case, and that is the reason that the name Joe Red came about. It came about because Joe Red looks like someone who ought

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to be called Joe Red. He has red hair.

Now, when it came to this one -- this is one that you really can't fool around with, red hair -- when it came to this one Frank Stasi outdid himself in changing positions. He took every position in the book. He started off with trying tomake the whole problem go away, having previously said this is a man with red hair, and so he said, "Well, I don't even recall having said that." That is on page 783 of the transcript.

I said to him, "Did you tell the police that when you purchased the mannite from Joe Red he had red hair?"

> "I don't recall." "r dome result."

"You don't recall?" direct combine prometty;

Answer, "I don't recall saying he had red hair."

That was effort No. 1 to make the problem go away. But it didn't go away. So now comes effort No. 2. Effort No. 2 is to say, "Well, you know, maybe I said it, but I wasn't too sure, you know, at the time I said it, I might have been mistaken." That is on page 785.

I was talking to him about the police and making a reference to red hair and then he answers, "That's what I said before. I just kept saying the thing. They asked me who, Joe, Joe? I only know him by Joe. And I says I think he has red hair and I says Joe Red. That's what

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I kept saying all the way." 3

That's Frank Stasi talking, explaining what happened when he spoke to the police. I told them that I think he has red hair." That is his second effort to get away from it.

But I still kept asking questions about it and so he changed again. The next statement was, "Well, I don't know, that's true, it was red hair, but it was redtinted, it was just tinted hair."

And then the crowning achievement of them all, so that he can face you, ladies and gentlemen. Otherwise he would have been laughed out of the court. Of course, you know he said, "When I was talking about red hair I meant a long time ago. I meant that I am calling him Joe Red and he has red hair, but I was referring way to the past."

Of course, what that does to his statement, he had just told the police, "I know him a couple of years." Now he is claiming when he is talking to the police he is thinking way in the past. That doesn't make any sense, of course. But apart from that, he is claiming it's back in the past, "That's what I was referring to."

Well, I confronted him with some tapes to challenge that statement, and I have them, and I would

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like to play them for you again, just to remind you of it.

Here is the first one. This is the voice of someone who is telling you on the stand that when he was speaking to the police he was referring to red-tinted hair way in the past. If you have any trouble hearing, of course, I will play it again, but I think that it's fairly clear.

(Taps played.)

MR. WARNER: "I see he's got red hair. I think they call him Joe Red."

But he outdid himself on the next tape. He went even beyond that one.

(Tape played.)

MR. WARNER: You know, I almost feel superfluous, because these tapes, they say everything. It's like Stasi's voice from the past coming back to call him a liar, much better than I can do. His own voice comes back. He says, "I was going to call him Red. I see he's got red hair."

Did he ever make any reference to years ago or anything like that or red-tinted hair? It's completely absent. His own voice proves it, ladies and gentlemen. His own voice shows what he said and what he meant. And what he said and what he meant was different from what he

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was doing up here.

Now, of course, he had to lie about that. You know, there is a limit to how far you can go when you are covering things up. It's true you can change things and try to do various things with the truth. But there is a limit. When you start calling white black and black white or, better, gray red, then nobody is going to pay any attention to that, no one is going to believe that.

And so you have to do something. You have to put some issue into it where at least he could sit there and face you. And so he said, "You can't see it now, but long ago this was the case."

First of all, the tape shows that was a total

lie. Second, we went back 25 years. Frank Stasi says he

knows him 10. We went back 25 years to Mr. Ceriale's

discharge from the Army. Hair color, brown.

Mr. Moliterni, secretary-treasurer of the

Plasterers Union, never saw red hair, never saw red-tinted
hair.

Frank Cermak from Washburn Wire Company, never saw red hair, never saw red-tinted hair.

Of course, all of them said they never knew him as Joe Red.

Finally, right up to the present, Ralph Sanchez,

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no red hair.

Now, ladies and gentlemen, I don't know what Mr. Phillips is going to say about all this. He is a smart lawyer, a very smart lawyer, and I am sure he is going to have some explanation, some way that he is going to try to explain all this. What I want to say to you is that when he does give you his explanation think about it. Ask yourselves is he explaining this situation away just the way any smart person could think of a theory that gets rid of a fact that is a disaster to the case or is he explaining it to me in a way where the facts ask to be understood that way, the facts call for that kind of interpretation. I suggest to you that what I have explained about these facts the facts themselves ask for as an explanation.

Now, Mr. Phillips might try to say to you, "Wall, Frank Stasi, he went and bought mannite from the defendant, he went during the daytime."

You remember during the questioning -- well, he also asked questions during Frank Cermak -- but during Ralph Sanchez he said, "Well, where does he go during the day," and Ralph Sanchez mentioned it.

He said, "How do you know that he is there?"

Of course, Ralph Sanchez answered it. "I send
him there. There are job slips, there are ways to check."

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Mr. Phillips said, "How about lunch hour?

I bet you don't know where he is during his lunch hour."

"That's true, I don't know. He gets an hour for lunch."

Now, maybe Mr. Phillips is going to try to say,

"Oh, well, Frank Stasi met him over there at the barbershop during lunch." But the image of the whole thing is just

preposterous, Joe Ceriale racing off the job as crew chief

to get down to the barbershop to meet Frank Stasi to sell

him some mannite.

Or Mr. Phillips might say to you, "You know, Mr. Warner is just trying to confuse you. He is telling you that this description is off, talking about the number of years and things." He is going to say, "You know, ladies and gentlemen, you know what really counts? He pointed the finger at him. He picked him out. He saw him, he pointed to him, he said that's the guy. So he was confused about his hair color, he was confused about his nickname, he was confused about the time that he knew him. He pointed him out."

First of all, the fact is if he was so confused why did he have to start telling so many lies up here.

That is No. 1.

There is something even more important. Of

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course he pointed him out. I know that he pointed him out.

You know that he pointed him out. How did he get here
if he didn't point him out? Of course he pointed him
out. The question is when did he point him out and why
did he point him out. And Frank Stasi told us. Frank Stasi
told us when and he told us why.

Red and they came back and they couldn't find him. Now,

I don't know where Joe Red went. Frank Stasi probably

didn't know where Joe Red went. But they couldn't find Joe

Red.

They said to Frank Stasi, "What's going on? Where is Joe Red?"

So they went and they showed him video tapes.

These video tapes were taken of the Pleasant Avenue area.

Anyone who happened to walk by in this area was on the video tape.

Frank Stasi looked at those video tapes, and inside his mind he knows he has got to produce, he has to come up with somebody. He looks and he looks and he doesn't see Joe Red, but he sees another Joe, and this desperate man, and I don't think anyone could deny that Frank Stasi with two greathig undercover sales hanging over his head was a desperate man, he picked out another Joe and he put

him in his place, and that was Joe Ceriale.

Ladies an- gentlemen, if there is any truth to what Frank Stasi was saying, if there is any truth to it, then there is a man somewhere out there, outside this courtroom, and he is barely known to Frank Stasi. He has red hair and he has a nickname to match and he can thank his lucky stars that when the police went out to look for him he wasn't there and that Frank Stasi panicked and put some other Joe in the seat that he should have been filling.

You know, I was thinking about this and it reminded me of something that I read and I took it out and I would like to read it to you. It was written out about a hundred years ago, but it's just as true today as it was then and as it will be a hundred years from now. It goes like this:

"The condemnation of an innocent person is
the rightful affair of all honest men, and though I may
well say I will never be a thief or a murderer, to say
I shall not some day be punished as such would be to speak
very boldly indeed."

Now, ladies and gentlemen, when the jury system functions at its best, and each of you I know wants it to, every innocent man can say boldly and without any fear, "I will never be punished for what I have not done."

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I believe that your verdict will reflect that principle and that you will find Joseph Ceriale not guilty.

Thank you.

THE COURT: All right. Mr. Marshal, will you take the jury out, please.

- (Jury left the courtroom.)

THE COURT: Mr. Rosenbaum, how long do you expect to take?

MR. ROSENBAUM: I would surmise somewhere about.

45 minutes to an hour.

minor miracle man. I arranged to have a doctor make a to house call to the jury tonight because they all seem to have colds. If you can get a doctor to make a house call you are going some, I am telling you.

MR. ROSENBAUM: I have my bag.

THE COURT: If you are going to take 45 minutes to an hour we just won't be able to do it tonight.

Under the circumstances we will start at 9.30 tomorrow morning promptly. You start off, Mr.Rosenbaum. You will be followed by Mr.Rosenberg, Mr. Lopez, then in the afternoon Mr. Ellis, Mrs. Rosner and Mr. Fisher.

I intend to get down that far by tomorrow afternoon even if we have to sit late.

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Mr. Lopez, come up here.

(Pause.)

THE COURT: Gentlemen, please be back here at 9.30 tomorrow morning. I would like to see Mr. Ellis and one of the prosecution team and the reporter in the robing room.

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THE COURT: There is an open motion.

To the best of my knowledge, this is the last motion in the case that is open.

MR. PHILLIPS: Is the question can he refer to that in the summation? Of course he can. There wasn't even an objection to it. It is evidence.

MR. ELLIS: Is it?

MR. CURRAN: That is my position.

MR. ELLIS: Your Honor, our position is that it is a hearsay declaration made by an alleged co-conspirator, but it does not satisfy the second element that it be made in furtherance of the conspiracy. It is purely narrative, it is purely historical.

Mamone is DiNapoli's partner, he is saying it.

THE COURT: He is saying more than that, which is the most important thing. That is why I asked you gentlemen to reread it.

"And that he was trying to see his partner,
Butchie."

He said, "Butchie? Butchie is away."

He said, "Not that Butchie, Butchie Mamone."

In other words, he is saying he was trying to see Butchie Mamone, apparently, in connection with narcotics.

MR. CURRAN: Your Honor, I thought the testimony was pretty clear. Barnaba was trying to get some junk from Dilacio. Dilacio said he talked to DiNapoli and he was trying to see Dinapoli's partner, Butch.

Barnaba said, "What do you mean, Butch, Butch is away, he's in jail."

That part is not there.

Dilacio said, "Not that Butch, Butch Mamone, DiNapoli's partner."

He said DiNapoli is trying to see Butch, not Barnaba.

Barnaba.

Barnaba.

Am I reading it wrong? In t reading it wrong?

It is the "he."

THE COURT: All right. Under the circumstances, I am going to deny your application, to which, of course, you have an automatic exception.

MR. ELLIS: Yes, sir.

(Adjourned to March 6, 1974, 1974, at 9:30 a.m.)

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